

# HB0210S01 compared with HB0210

~~text~~ shows text that was in HB0210 but was deleted in HB0210S01.

text shows text that was not in HB0210 but was inserted into HB0210S01.

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Representative Jon Hawkins proposes the following substitute bill:

## JUSTICE COURT CHANGES

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon Hawkins**

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

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### LONG TITLE

#### General Description:

This bill amends provisions related to justice courts.

#### Highlighted Provisions:

This bill:

- ▶ creates the Justice Court Reform Task Force;
- ▶ provides the membership of the Justice Court Reform Task Force;
- ▶ addresses vacancies, salaries and expenses, staffing, and the duties of the Justice Court Reform Task Force;
- ▶ provides a sunset date for the Justice Court Reform Task Force;
- ▶ clarifies that a justice court is part of the state judiciary;
- ▶ addresses the independence of a justice court from other branches of government for a municipality or county;

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- ▶ amends the eligibility requirements for a justice court judge;
- ▶ amends provisions regarding the salary of a justice court judge;
- ▶ repeals a statute regarding an annual review and adjustment of a justice court judge's compensation;†

—→ clarifies that the Utah Supreme Court and Utah Judicial Council provide direction and oversight of justice courts and justice court personnel in the exercise of judicial functions and responsibilities;

—→ allows a justice court judge to appoint a court administrator or court clerk;

—→ addresses the responsibilities of a justice court judge, justice court personnel, and a municipality or county in regard to a justice court;‡ and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**49-12-406**, as last amended by Laws of Utah 2021, Chapter 193

**49-13-406**, as last amended by Laws of Utah 2021, Chapter 193

**63I-1-236**, as last amended by Laws of Utah 2022, Chapters 175, 247

**78A-7-101**, as last amended by Laws of Utah 2012, Chapter 205

**78A-7-201**, as last amended by Laws of Utah 2016, Chapter 146

**78A-7-206**, as last amended by Laws of Utah 2022, Chapter 276

#### ENACTS:

**36-29-112**, Utah Code Annotated 1953

#### ~~†REPEALS AND REENACTS:~~

—→ ~~**78A-7-210**, as last amended by Laws of Utah 2012, Chapter 205~~

#### ‡REPEALS:

**78A-7-207**, 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:*

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Section 1. Section **36-29-112** is enacted to read:

### **36-29-112. Justice Court Reform Task Force.**

(1) As used in this section, "task force" means the Justice Court Reform Task Force created in Subsection (2).

(2) There is created the Justice Court Reform Task Force consisting of the following members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom may be from the same political party; and

(b) four members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(3) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the task force.

(4) If a vacancy occurs in the membership of the task force described in Subsection (2), the member shall be replaced in the same manner in which the original appointment was made.

(5) (a) A majority of the members of the task force constitutes a quorum.

(b) The action of a majority of a quorum constitutes an action of the task force.

(6) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with:

(a) Section 36-2-2;

(b) Legislative Joint Rules, Title 5, Chapter 2, Lodging, Meal, and Transportation Expenses; and

(c) Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(7) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(8) The task force shall review the court system of this state and make recommendations regarding:

(a) the structure and organization of the court system of this state;

(b) appeals from the justice court to the district court;

(c) qualifications and requirements for justice court judges;

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(d) the procedures and practices for small claims cases and infractions; and

(e) other changes related to justice courts.

(9) If the task force recommends legislation, the task force may prepare legislation for consideration by the Legislature at the next general session.

(10) On or before November 30 of each year that the task force is in effect, the task force shall provide a report to:

(a) the Judiciary Interim Committee; and

(b) the Legislative Management Committee.

(11) The task force is repealed July 1, 2025.

Section 2. Section **49-12-406** is amended to read:

### **49-12-406. Exceptions for part-time elective or appointive service -- Computation of allowance -- Justice court judges.**

(1) Notwithstanding the provisions of Sections 49-11-401 and 49-12-102, and unless otherwise provided in this section, a member's elective or appointive service rendered on a basis not considered full-time by the office shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.

(2) (a) (i) A justice court judge who has service with only one participating employer shall be considered part-time or full-time by the office as certified by the participating employer.

(ii) If there is a dispute between the office and a participating employer or justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(b) If a justice court judge has a combination of part-time service and full-time position service with one participating employer, the office shall compute separate allowances on the basis of compensation actually received by the judge during the part-time and full-time periods of service.

(3) (a) A justice court judge who has service with more than one participating employer shall be considered full-time by the office for a period of service in which the judge is certified as full-time by:

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- (i) a participating employer;
- (ii) a group of participating employers where the judge's part-time work for each employer, when aggregated, amounts to full-time service; or
- (iii) the Administrative Office of the Courts beginning on or after January 1, 2009, based on the judge's aggregate caseload of the multiple employers as determined by the judge's caseloads of the individual courts of each employer in accordance with Subsection ~~[78A-7-206(1)(b)(ii)]~~ 78A-7-206(2)(a).

(b) If a justice court judge has full-time service under Subsection (3)(a), the office shall compute an allowance on the basis of total compensation actually received from all participating employers by the judge during the total period of full-time service.

(c) If a justice court judge has part-time service performed that is not within a period considered full-time service under Subsection (3)(a), the office shall compute a separate allowance on the basis of compensation actually received by the member during the period of part-time service.

(d) If there is a dispute between the office and a participating employer, a group of participating employers, or a justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(4) All of the service rendered by a justice court judge in any one fiscal or calendar year may not count for more than one year of service credit.

Section 3. Section **49-13-406** is amended to read:

**49-13-406. Exceptions for part-time elective or appointive service -- Computation of allowance -- Justice court judges.**

(1) Notwithstanding the provisions of Sections 49-11-401 and 49-13-102, and unless otherwise provided in this section, a member's elective or appointive service rendered on a basis not considered full-time by the office shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.

(2) (a) (i) A justice court judge who has service with only one participating employer shall be considered part-time or full-time by the office as certified by the participating employer.

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(ii) If there is a dispute between the office and a participating employer or justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(b) If a justice court judge has a combination of part-time service and full-time position service with one participating employer, the office shall compute separate allowances on the basis of compensation actually received by the judge during the part-time and full-time periods of service.

(3) (a) A justice court judge who has service with more than one participating employer shall be considered full-time by the office for a period of service in which the judge is certified as full-time by:

(i) a participating employer;

(ii) a group of participating employers where the judge's part-time work for each employer, when aggregated, amounts to full-time service; or

(iii) the Administrative Office of the Courts beginning on or after January 1, 2009, based on the judge's aggregate caseload of the multiple employers as determined by the judge's caseloads of the individual courts of each employer in accordance with Subsection ~~[78A-7-206(1)(b)(ii)]~~ 78A-7-206(2)(a).

(b) If a justice court judge has full-time service under Subsection (3)(a), the office shall compute an allowance on the basis of total compensation actually received from all participating employers by the judge during the total period of full-time service.

(c) If a justice court judge has part-time service performed that is not within a period considered full-time service under Subsection (3)(a), the office shall compute a separate allowance on the basis of compensation actually received by the member during the period of part-time service.

(d) If there is a dispute between the office and a participating employer, a group of participating employers, or a justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(4) All of the service rendered by a justice court judge in any one fiscal or calendar year may not count for more than one year of service credit.

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Section 4. Section **63I-1-236** is amended to read:

**63I-1-236. Repeal dates: Title 36.**

(1) Title 36, Chapter 17, Legislative Process Committee, is repealed January 1, 2028.

(2) Section 36-12-20 is repealed June 30, 2023.

(3) Title 36, Chapter 28, Veterans and Military Affairs Commission, is repealed January 1, 2025.

(4) Section 36-29-108, Criminal Code Evaluation Task Force, is repealed July 1, 2023.

(5) Section 36-29-112, Justice Court Reform Task Force, is repealed July 1, 2025.

~~[(5) Title 36, Chapter 31, Martha Hughes Cannon Capitol Statue Oversight Committee, is repealed January 1, 2022.]~~

Section 5. Section **78A-7-101** is amended to read:

**78A-7-101. Creation of justice court -- Not of record -- Independent branch of local government -- Classes of justice.**

(1) (a) Under Article VIII, Section 1, Utah Constitution, there is created a court not of record known as the justice court.

(b) The judges of this court are justice court judges.

(2) A justice court is:

(a) a court of this state in accordance with Section 78A-1-101;

(b) ~~is considered~~ a part of the state judiciary even though the justice court is funded and staffed by a municipality or county; and

(c) independent from the other branches of government for a municipality or county.

(3) A justice court ~~is not considered and~~ may not be treated as part of the executive or legislative branches or offices of a municipality or county.

(4) A municipality or county may only operate a justice court as authorized by this chapter.

~~[(2)]~~ (5) Justice courts shall be divided into the following classes:

(a) Class I: 501 or more case filings per month;

(b) Class II: 201-500 case filings per month;

(c) Class III: 61-200 case filings per month; and

(d) Class IV: 60 or fewer case filings per month.

Section 6. Section **78A-7-201** is amended to read:

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### 78A-7-201. Justice court judge eligibility -- Mandatory retirement.

(1) A justice court judge shall be:

(a) a citizen of the United States;

(b) 25 years ~~[of age]~~ old or older;

(c) a resident of Utah for at least three years immediately preceding ~~[his]~~ the judge's appointment;

(d) upon appointment or within a reasonable time after appointment, a resident of the county, an adjacent county, or the judicial district in which the justice court is located; and

~~[(d) a resident of the county in which the court is located or an adjacent county for at least six months immediately preceding appointment; and]~~

(e) a qualified voter of the county in which the judge resides.

(2) (a) On and after May 3, 2023, a justice court judge shall have a degree from a law school that makes one eligible to apply for admission to a bar in any state.

(b) A justice court judge holding office on May 3, 2023, who does not meet the qualification described in Subsection (2)(a) may continue in office until the judge resigns, retires, is not retained in a retention election, or is removed from office.

(3) Notwithstanding Subsection (2), a justice court judge is not required to be admitted to practice law in the state as a qualification to hold office.

~~[(2) Effective May 10, 2016, a justice court judge is not required to be admitted to practice law in the state as a qualification to hold office but:]~~

~~[(a) in counties of the first and second class, a justice court judge shall have a degree from a law school that makes one eligible to apply for admission to a bar in any state; and]~~

~~[(b) in counties of the third, fourth, fifth, and sixth class, a justice court judge shall have at the minimum a diploma of graduation from high school or its equivalent.]~~

~~[(3)]~~ (4) A justice court judge shall be a person who has demonstrated maturity of judgment, integrity, and the ability to understand and apply appropriate law with impartiality.

~~[(4)]~~ (5) A justice court judge shall retire upon attaining the age of 75 years.

~~[(5) In counties of the first and second class, if there are not at least three applicants for a justice court judge position who meet the requirements of Subsection (2)(a), the justice court nominating commission shall re-advertise the position, and may accept applications from persons who do not meet the requirements of Subsections (1)(d) and (2)(a).]~~



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~~[(6)(a) In accordance with Subsection 78A-7-202(3), the Administrative Office of the Courts shall provide notice to all attorneys in the county and adjacent counties when a justice court judge position is vacant.]~~

~~[(b) If the justice court nominating commission waives the requirement of Subsection (1)(d) in accordance with Subsection (5), the Administrative Office of the Courts shall provide notice to all attorneys in the state.]~~

~~[(7) A justice court judge holding office on May 10, 2016, who does not meet the qualification in Subsection (2)(a) may continue in the judge's position until the judge resigns, retires, is not retained in a retention election, or is removed from office.]~~

Section 7. Section **78A-7-206** is amended to read:

**78A-7-206. Determination of compensation for justice court judge -- Limits on secondary employment -- Prohibition on holding political or elected office -- Penalties.**

~~[(1) Every justice court judge shall be paid a fixed compensation determined by the governing body of the respective municipality or county.]~~

~~[(a) The governing body of the municipality or county may not set a full-time justice court judge's salary at less than 50% nor more than 90% of a district court judge's salary.]~~

~~[(b) The governing body of the municipality or county shall set a part-time justice court judge's salary as follows:]~~

~~[(i) The governing body shall first determine the full-time salary range outlined in Subsection (1)(a).]~~

~~[(ii) The caseload of a part-time judge shall be determined by the office of the state court administrator and expressed as a percentage of the caseload of a full-time judge.]~~

~~[(iii) The judge's salary shall then be determined by applying the percentage determined in Subsection (1)(b)(ii) against the salary range determined in Subsection (1)(a).]~~

~~[(c) A justice court judge shall receive an annual salary adjustment at least equal to the average salary adjustment for all county or municipal employees for the jurisdiction served by the judge.]~~

~~[(d) Notwithstanding Subsection (1)(c), a justice court judge may not receive a salary greater than 90% of the salary of a district court judge.]~~

~~[(e) A justice court judge employed by more than one entity as a justice court judge may not receive a total salary for service as a justice court judge greater than the salary of a~~

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district court judge.]

~~[(f)]~~ A salary described in this Subsection (1) does not include additional compensation provided for a presiding judge or associate presiding judge of a justice court under Section 78A-7-209.5.]

~~[(2)]~~ (1) The governing body of a municipality or county shall pay a full-time justice court judge a salary that is 90% of a district court judge's salary.

(2) The governing body of a municipality or county shall pay a part-time justice court judge a salary that is determined by:

(a) the caseload of a part-time judge as established by the Administrative Office of the Courts and expressed as a percentage of the caseload of a full-time justice court judge; and

(b) applying the percentage under Subsection (2)(a) against the salary of a full-time justice court judge under Subsection (1).

(3) A justice court judge employed by more than one entity as a justice court judge may not receive a total salary for service as a justice court judge greater than the salary of a district court judge.

(4) A salary described in this section does not include additional compensation provided for a presiding judge or associate judge of a justice court under Section 78A-7-209.5.

(5) A justice court judge may not appear as an attorney in any:

(a) justice court;

(b) criminal matter in any federal, state, or local court; or

(c) juvenile court case involving conduct which would be criminal if committed by an adult.

~~[(3)]~~ (6) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

~~[(4)]~~ (7) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.

~~[(5)]~~ (8) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

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~~[(6)] (9)~~ The Judicial Council shall file a formal complaint with the Judicial Conduct Commission for each violation of this section.

~~{ Section 8. Section 78A-7-210 is repealed and reenacted to read:~~

~~78A-7-210. Justice court judge, staff, and local government responsibilities.~~

~~(1) A justice court, a justice court judge, and all staff for a justice court are subject to the direction and oversight of the Supreme Court and Judicial Council in the exercise of judicial functions and administration.~~

~~(2) (a) A justice court judge is responsible for court operations and administration of the justice court.~~

~~(b) If needed and with the advice and consent of the governing body of the municipality or county, a justice court judge may appoint a court administrator or clerk of court to whom the judge may delegate the day-to-day administration of the justice court.~~

~~(c) A justice court judge, or the court administrator or clerk of court for the justice court, is responsible for the hiring, firing, and supervision of justice court personnel in accordance with generally applicable municipal or county personnel rules and policies.~~

~~(3) A justice court judge and all justice court personnel are subject to all generally applicable municipal or county rules, regulations, and personnel policies, to the extent that the rules, regulations, and personnel policies do not conflict with any laws, rules, regulations, or ethical duties applicable to judges and employees of the state judicial branch of government.~~

~~(4) A county executive or municipal legislative body may refer a justice court judge for repeated or willful noncompliance to the Judicial Conduct Commission.~~

~~(5) (a) The Supreme Court, the Judicial Council, the presiding judge of the district court or justice court, or the Board of Justice Court Judges may ask a justice court judge to serve on committees or boards or to complete assignments, including responding to search warrant requests.~~

~~(b) A request under Subsection (5)(a) is considered part of the justice court judge's responsibility as a judicial officer and is consistent with responsibilities for all state court judges.~~

~~(c) The municipality or county shall consider a request under Subsection (5)(a) to be within the justice court judge's job description and responsibilities.~~

~~(6) (a) The legislative branch of the municipality or county shall establish a budget for~~

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~~the justice court in consultation with the justice court judge and the court administrator or clerk of court for the justice court:~~

~~—— (b) A budget for a justice court may not include expenses for functions attributable to the other branches of the county or municipal government, including expenses for prosecution or indigent defense.~~

~~—— (c) The Administrative Office of the Courts may inspect a budget established for a justice court under Subsection (6)(a).~~

‡ Section ~~{9}~~8. **Repealer.**

This bill repeals:

Section 78A-7-207, **Compensation -- Annual review and adjustment.**