

JUDICIARY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ addresses the interest on judgment a court enters under certain circumstances;
- ▶ provides for how proof of security may be submitted to the clerk of the court;
- ▶ addresses length of a plea in abeyance;
- ▶ repeals certain requirements for an indictment to be valid;
- ▶ addresses which days a court is closed;
- ▶ addresses dissolution of a justice court created by interlocal agreement;
- ▶ modifies a provision related to an unsworn declaration;
- ▶ addresses which documents are sealed related to adoption;
- ▶ addresses court authorizing service by publication or mail under certain

circumstances; and

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

15-1-4, as last amended by Laws of Utah 2017, Chapter 379

30 41-12a-303.2, as last amended by Laws of Utah 2017, Chapter 416

31 77-2a-2, as enacted by Laws of Utah 1993, Chapter 82

32 77-10a-14, as enacted by Laws of Utah 1990, Chapter 318

33 78A-2-212, as renumbered and amended by Laws of Utah 2008, Chapter 3

34 78A-7-102, as last amended by Laws of Utah 2012, Chapter 205

35 78B-5-705, as renumbered and amended by Laws of Utah 2008, Chapter 119

36 78B-6-141, as last amended by Laws of Utah 2017, Chapter 417

37 78B-6-807, as last amended by Laws of Utah 2016, Chapter 33



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

40 Section 1. Section 15-1-4 is amended to read:

41 **15-1-4. Interest on judgments.**

42 (1) As used in this section, "federal postjudgment interest rate" means the interest rate
43 established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

44 (2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful
45 contract shall conform to the contract and shall bear the interest agreed upon by the parties,
46 which shall be specified in the judgment.

47 (b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23,
48 Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate
49 imposed under Subsection (3)(a) on an amount not exceeding the sum of:

- 50 (i) the total of the principal balance of the deferred deposit loan;
- 51 (ii) interest at the rate imposed by the deferred deposit loan agreement for a period not
- 52 exceeding 10 weeks as provided in Subsection 7-23-401(4);
- 53 (iii) costs;
- 54 (iv) attorney fees; and
- 55 (v) other amounts allowed by law and ordered by the court.

56 (3) (a) Except as otherwise provided by law, or as governed by Subsection (4), all other
57 final civil and criminal judgments of the district court and justice court shall bear interest at the

58 federal postjudgment interest rate as of January 1 of each year, plus 2%.

59 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
60 interest rate for the duration of the judgment.

61 (c) The interest on criminal judgments shall be calculated on the total amount of the
62 judgment.

63 (d) Interest paid on state revenue shall be deposited in accordance with Section
64 63A-3-505.

65 (e) Interest paid on revenue to a county or municipality shall be paid to the general
66 fund of the county or municipality.

67 (4) A judgment under \$10,000 in an action regarding the purchase of goods and
68 services shall bear interest from the date on which the district court or justice court enters the
69 ~~judgement~~ judgment at 10% plus the federal postjudgment interest rate in effect on January 1
70 of the year in which the judgment is entered.

71 Section 2. Section 41-12a-303.2 is amended to read:

72 **41-12a-303.2. Evidence of owner's or operator's security to be carried when**
73 **operating motor vehicle -- Defense -- Penalties.**

74 (1) As used in this section:

75 (a) "Division" means the Motor Vehicle Division of the State Tax Commission.

76 (b) "Registration materials" means the evidences of motor vehicle registration,
77 including all registration cards, license plates, temporary permits, and nonresident temporary
78 permits.

79 (2) (a) (i) A person operating a motor vehicle shall:

80 (A) have in the person's immediate possession evidence of owner's or operator's
81 security for the motor vehicle the person is operating; and

82 (B) display it upon demand of a peace officer.

83 (ii) A person is exempt from the requirements of Subsection (2)(a)(i) if the person is
84 operating:

85 (A) a government-owned or leased motor vehicle; or

86 (B) an employer-owned or leased motor vehicle and is driving it with the employer's
87 permission.

88 (iii) A person operating a vehicle that is owned by a rental company, as defined in
89 Section 31A-22-311, may comply with Subsection (2)(a)(i) by having in the person's
90 immediate possession, or displaying, the rental vehicle's rental agreement, as defined in Section
91 31A-22-311.

92 (b) Evidence of owner's or operator's security includes any one of the following:

93 (i) a copy of the operator's valid:

94 (A) insurance policy;

95 (B) insurance policy declaration page;

96 (C) binder notice;

97 (D) renewal notice; or

98 (E) card issued by an insurance company as evidence of insurance;

99 (ii) a certificate of insurance issued under Section 41-12a-402;

100 (iii) a certified copy of a surety bond issued under Section 41-12a-405;

101 (iv) a certificate of the state treasurer issued under Section 41-12a-406;

102 (v) a certificate of self-funded coverage issued under Section 41-12a-407; or

103 (vi) information that the vehicle or driver is insured from the Uninsured Motorist

104 Identification Database Program created under Title 41, Chapter 12a, Part 8, Uninsured

105 Motorist Identification Database Program.

106 (c) A card issued by an insurance company as evidence of owner's or operator's
107 security under Subsection (2)(b)(i)(E) on or after July 1, 2014, may not display the owner's or
108 operator's address on the card.

109 (d) (i) A person may provide to a peace officer evidence of owner's or operator's
110 security described in this Subsection (2) in:

111 (A) a hard copy format; or

112 (B) an electronic format using a mobile electronic device.

113 (ii) If a person provides evidence of owner's or operator's security in an electronic

114 format using a mobile electronic device under this Subsection (2)(d), the peace officer viewing
115 the owner's or operator's security on the mobile electronic device may not view any other
116 content on the mobile electronic device.

117 (iii) Notwithstanding any other provision under this section, a peace officer is not
118 subject to civil liability or criminal penalties under this section if the peace officer inadvertently
119 views content other than the evidence of owner's or operator's security on the mobile electronic
120 device.

121 (e) (i) Evidence of owner's or operator's security from the Uninsured Motorist
122 Identification Database Program described under Subsection (2)(b)(vi) supercedes any
123 evidence of owner's or operator's security described under Subsection (2)(b)(i)(D) or (E).

124 (ii) A peace officer may not cite or arrest a person for a violation of Subsection (2)(a) if
125 the Uninsured Motorist Identification Database Program created under Title 41, Chapter 12a,
126 Part 8, Uninsured Motorist Identification Database Program, information indicates that the
127 vehicle or driver is insured.

128 (3) It is an affirmative defense to a charge or in an administrative action under this
129 section that the person had owner's or operator's security in effect for the vehicle the person
130 was operating at the time of the person's citation or arrest.

131 (4) (a) The following are considered proof of owner's or operator's security for
132 purposes of Subsection (3) and Section [41-12a-804](#):

133 (i) evidence defined in Subsection (2)(b);

134 (ii) a written statement from an insurance producer or company verifying that the
135 person had the required motor vehicle insurance coverage on the date specified; or

136 (iii) a written statement from an insurance producer or company, or provision in an
137 insurance policy, indicating that the policy provides coverage for a newly purchased car and the
138 coverage extended to the date specified.

139 (b) The court considering a citation issued under this section shall allow the evidence
140 or a written statement under Subsection (4)(a) and a copy of the citation to be ~~faxed~~
141 electronically submitted or mailed to the clerk of the court to satisfy Subsection (3).

142 (c) The notice under Section 41-12a-804 shall specify that the written statement under
143 Subsection (4)(a) and a copy of the notice shall be faxed or mailed to the designated agent to
144 satisfy the proof of owner's or operator's security required under Section 41-12a-804.

145 (5) A violation of this section is an infraction, and the fine shall be not less than:

146 (a) \$400 for a first offense; and

147 (b) \$1,000 for a second and subsequent offense within three years of a previous
148 conviction or bail forfeiture.

149 (6) Upon receiving notification from a court of a conviction for a violation of this
150 section, the department:

151 (a) shall suspend the person's driver license; and

152 (b) may not renew the person's driver license or issue a driver license to the person
153 until the person gives the department proof of owner's or operator's security.

154 (i) This proof of owner's or operator's security shall be given by any of the ways
155 required under Section 41-12a-401.

156 (ii) This proof of owner's or operator's security shall be maintained with the department
157 for a three-year period.

158 (iii) An insurer that provides a certificate of insurance as provided under Section
159 41-12a-402 or 41-12a-403 may not terminate the insurance policy unless notice of termination
160 is filed with the department no later than 10 days after termination as required under Section
161 41-12a-404.

162 (iv) If a person who has canceled the certificate of insurance applies for a license
163 within three years from the date proof of owner's or operator's security was originally required,
164 the department shall refuse the application unless the person reestablishes proof of owner's or
165 operator's security and maintains the proof for the remainder of the three-year period.

166 Section 3. Section 77-2a-2 is amended to read:

167 **77-2a-2. Plea in abeyance agreement -- Negotiation -- Contents -- Terms of**
168 **agreement -- Waiver of time for sentencing.**

169 (1) At any time after acceptance of a plea of guilty or no contest but ~~[prior to]~~ before

170 entry of judgment of conviction and imposition of sentence, the court may, upon motion of
171 both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter
172 judgment of conviction against the defendant nor impose sentence upon the defendant within
173 the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.

174 (2) [~~The~~] A defendant shall be represented by counsel during negotiations for a plea in
175 abeyance and at the time of acknowledgment and affirmation of any plea in abeyance
176 agreement unless the defendant [~~shall have~~] knowingly and intelligently [~~waived his~~] waives
177 the defendant's right to counsel.

178 (3) [~~The~~] A defendant has the right to be represented by counsel at any court hearing
179 relating to a plea in abeyance agreement.

180 (4) (a) Any plea in abeyance agreement entered into between the prosecution and the
181 defendant and approved by the court shall include a full, detailed recitation of the requirements
182 and conditions agreed to by the defendant and the reason for requesting the court to hold the
183 plea in abeyance.

184 (b) If the plea is to a felony or any combination of misdemeanors and felonies, the
185 agreement shall be in writing and shall, [~~prior to~~] before acceptance by the court, be executed
186 by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the
187 court.

188 (5) A plea [~~shall~~] may not be held in abeyance for a period longer than 18 months if the
189 plea was to any class of misdemeanor or longer than three years if the plea was to any degree of
190 felony or to any combination of misdemeanors and felonies.

191 (6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years
192 if the plea is to any class of misdemeanor and the plea in abeyance agreement includes a
193 condition that the defendant participate in a problem solving court approved by the Judicial
194 Council.

195 [~~(6)~~] (7) A plea in abeyance agreement [~~shall~~] may not be approved unless the
196 defendant, before the court, and any written agreement, knowingly and intelligently waives
197 time for sentencing as designated in Rule 22(a), Utah Rules of Criminal Procedure.

198 Section 4. Section 77-10a-14 is amended to read:

199 **77-10a-14. Concurrence for indictment -- Proof -- Validity -- Disclosure.**

200 (1) An indictment may be found only upon the concurrence of at least three-fourths, or
201 the next highest whole number, of the grand jurors.

202 (2) An indictment may not be found unless the grand jurors who vote in favor of the
203 indictment find there is clear and convincing evidence to believe the crime to be charged was
204 committed and the person to be indicted committed ~~[it]~~ the crime. An indictment may not be
205 returned solely on the basis of incompetent hearsay.

206 ~~[(3) To be valid, the indictment shall be signed by the foreman and the attorney for the
207 state or special prosecutor and returned to the managing judge in open court. The clerk of the
208 managing court shall file the indictment upon receipt.]~~

209 ~~[(4)]~~ (3) To be valid, the indictment shall be signed by the foreman and then returned
210 to the managing judge in open court. The clerk of the managing court shall file the indictment
211 upon receipt.

212 ~~[(5)]~~ (4) (a) The managing judge who takes the return of the indictment may direct that
213 the indictment be kept secret until the defendant is in custody or has been released pending
214 trial.

215 (b) The clerk shall then seal the indictment and, except for transferring the indictment
216 to the appropriate court for trial as provided by this chapter, may not permit any person to
217 disclose the return of the indictment except when necessary for the issuance and execution of a
218 warrant or summons.

219 Section 5. Section 78A-2-212 is amended to read:

220 **78A-2-212. Days on which court closed -- Exceptions.**

221 Judicial business on Sunday, on any day on which a regular general election is held, or
222 on any legal holiday, is limited to the following purposes:

223 (1) to give, upon their request, instructions to a jury when deliberating on ~~[their]~~ the
224 jury's verdict;

225 (2) to receive a verdict or discharge a jury;

226 (3) for the exercise of the powers of a magistrate in a criminal action, or in a
227 proceeding of a criminal nature; and

228 (4) judicial business not involving a trial or hearing unless the judge finds it necessary
229 for the fair administration of justice.

230 Section 6. Section **78A-7-102** is amended to read:

231 **78A-7-102. Establishment of justice courts.**

232 (1) (a) ~~[For the purposes of]~~ As used in this section, to "create a justice court" means
233 to:

234 (i) establish a justice court; or

235 (ii) establish a justice court under Title 11, Chapter 13, Interlocal Cooperation Act.

236 (b) For the purposes of this section, if more than one municipality or county is
237 collectively proposing to create a justice court, the class of the justice court shall be determined
238 by the total citations or cases filed within the territorial jurisdiction of the proposed justice
239 court.

240 (2) ~~[Municipalities or counties]~~ A municipality or county of the first or second class
241 may create a justice court by filing a written declaration with the Judicial Council on or before
242 July 1 at least two years ~~[prior to]~~ before the effective date of the election. Upon demonstration
243 of compliance with operating standards as established by statute and the Judicial Council, the
244 Judicial Council shall certify the creation of the justice court ~~[pursuant to]~~ under Section
245 78A-7-103.

246 (3) (a) ~~[Municipalities or counties]~~ A municipality or county of the third, fourth, or fifth
247 class may create a justice court by demonstrating the need for the justice court and filing a
248 written declaration with the Judicial Council on or before July 1 at least one year ~~[prior to]~~
249 before the effective date of the election.

250 (b) A municipality or county ~~[establishing]~~ creating a justice court shall demonstrate to
251 the Judicial Council that a justice court is needed. In evaluating the need for a justice court, the
252 Judicial Council shall consider factors of population, case filings, public convenience,
253 availability of law enforcement agencies and court support services, proximity to other courts,

254 and any special circumstances.

255 (c) The Judicial Council shall certify the ~~[establishment of a]~~ creation of the justice
256 court [pursuant to] under Section 78A-7-103, if the ~~[council]~~ Judicial Council determines:

257 (i) a need exists;

258 (ii) the municipality or county has filed a timely application; and

259 (iii) the proposed justice court will be in compliance with all of the operating standards
260 established by statute and the Judicial Council.

261 (4) (a) A municipality that has ~~[an established]~~ a justice court may expand the
262 territorial jurisdiction of ~~[its]~~ the justice court by entering into an agreement ~~[pursuant to]~~ under
263 Title 11, Chapter 13, Interlocal Cooperation Act, with one or more other municipalities, or the
264 county in which the municipality exists.

265 (b) A justice court enlarged under this ~~[section]~~ Subsection (4) may not be considered
266 as ~~[establishing]~~ creating a new justice court. An expanded justice court shall demonstrate that
267 it will be in compliance with all of the requirements of the operating standards as established
268 by statute and the Judicial Council before the justice court expands.

269 (c) A municipality or county seeking to expand the territorial jurisdiction of a justice
270 court shall notify the Judicial Council:

271 (i) no later than the notice period required in Section 78A-7-123, when the expanded
272 justice court is a result of the dissolution of one or more justice courts; or

273 (ii) no later than 180 days before the expanded court seeks to begin operation when the
274 expanded justice court is a result of other circumstances.

275 (d) The Judicial Council shall certify the expansion of a justice court if it determines
276 that the expanded justice court is in compliance with the operating standards established by
277 statute and the Judicial Council.

278 (e) (i) A municipality or county that has a justice court at the time of executing an
279 interlocal agreement, under Title 11, Chapter 13, Interlocal Cooperation Act, to become part of
280 an expanded court shall resume operation of the justice court upon termination of the interlocal
281 agreement in accordance with this Subsection (4)(e) or dissolve its justice courts in accordance

282 with Subsection (4)(e)(iii).

283 (ii) The municipality or county shall notify the Judicial Council at least 90 days before
284 resuming operations. The municipality or county shall demonstrate that the municipality's or
285 county's justice court will be in compliance with the operating standards.

286 (iii) If the Judicial Council determines that a justice court will not be in compliance
287 with the operating standards, the Judicial Council shall direct the expanded justice court to
288 continue operation until the Judicial Council is satisfied the municipality's or county's justice
289 court will meet the operating standards or until the municipality or county dissolves the
290 municipality's or county's justice court in accordance with Section [78A-7-123](#).

291 (iv) If the interlocal agreement includes a municipality or county that did not have a
292 justice court at the time the interlocal agreement was executed, the municipality or county shall
293 notify the Judicial Council at least 180 days before termination of the interlocal agreement. In
294 the notification, the municipality or county shall set forth its intentions in regard to adjudicating
295 offenses committed within the municipality's or county's territorial boundaries. The Judicial
296 Council may require the expanded justice court to continue operation until the Judicial Council
297 is satisfied that the municipality's or county's caseload will be adequately subsumed by another
298 justice court.

299 (5) Upon request from a municipality or county seeking to create a justice court, the
300 Judicial Council may shorten the time required between the [city's] municipality's or county's
301 written declaration or election to create a justice court and the effective date of the election.

302 (6) The Judicial Council may by rule provide resources and procedures adequate for
303 the timely disposition of all matters brought before the courts. The [~~administrative office of the~~
304 ~~courts~~] Administrative Office of the Courts and local governments shall cooperate in allocating
305 resources to operate the courts in the most efficient and effective manner based on the
306 allocation of responsibility between courts of record and not of record.

307 Section 7. Section **78B-5-705** is amended to read:

308 **78B-5-705. Unsworn declaration in lieu of affidavit.**

309 (1) If the [~~Utah Rules of Criminal Procedure, Civil Procedure, or Evidence~~] Utah

310 Supreme Court rules of procedure or evidence require or permit a written declaration upon
311 oath, an individual may, with like force and effect, provide an unsworn written declaration,
312 subscribed and dated under penalty of this section, in substantially the following form:

313 "I declare (or certify, verify, or state) under criminal penalty of the State of Utah that the
314 foregoing is true and correct.

315 Executed on (date).

316 (Signature)".

317 (2) A person who knowingly makes a false written statement [~~as provided~~] under
318 Subsection (1) is guilty of a class B misdemeanor.

319 Section 8. Section **78B-6-141** is amended to read:

320 **78B-6-141. Court hearings may be closed -- Petition and documents sealed --**

321 **Exceptions.**

322 (1) Notwithstanding Section **78A-6-114**, court hearings in adoption cases may be
323 closed to the public upon request of a party to the adoption petition and upon court approval. In
324 a closed hearing, only the following individuals may be admitted:

325 (a) a party to the proceeding;

326 (b) the adoptee;

327 (c) a representative of an agency having custody of the adoptee;

328 (d) in a hearing to relinquish parental rights, the individual whose rights are to be
329 relinquished and invitees of that individual to provide emotional support;

330 (e) in a hearing on the termination of parental rights, the individual whose rights may
331 be terminated;

332 (f) in a hearing on a petition to intervene, the proposed intervenor;

333 (g) in a hearing to finalize an adoption, invitees of the petitioner; and

334 (h) other individuals for good cause, upon order of the court.

335 (2) An adoption document[~~, the written report described in Section **78B-6-135**,~~] and
336 any other documents filed in connection with a petition for adoption are sealed.

337 (3) The documents described in Subsection (2) may only be open to inspection and

338 copying:

339 (a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:

340 (i) while the proceeding is pending; or

341 (ii) within six months after the day on which the adoption decree is entered;

342 (b) subject to Subsection (5)(b), if a court enters an order permitting access to the
343 documents by an individual who has appealed the denial of that individual's motion to
344 intervene;

345 (c) upon order of the court expressly permitting inspection or copying, after good cause
346 has been shown;

347 (d) as provided under Section 78B-6-144;

348 (e) when the adoption document becomes public on the one hundredth anniversary of
349 the date the final decree of adoption was entered;

350 (f) when the birth certificate becomes public on the one hundredth anniversary of the
351 date of birth;

352 (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court
353 order, unless the final decree of adoption is entered by the juvenile court under Subsection
354 78B-6-115(3)(b); or

355 (h) to an adult adoptee, to the extent permitted under Subsection (4).

356 (4) (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect,
357 on a written consent form provided by the office, to permit identifying information about the
358 birth parent to be made available for inspection by an adult adoptee.

359 (b) A birth parent may, at any time, file a written document with the office to:

360 (i) change the election described in Subsection (4)(a); or

361 (ii) elect to make other information about the birth parent, including an updated
362 medical history, available for inspection by an adult adoptee.

363 (c) A birth parent may not access any identifying information or an adoption document
364 under this Subsection (4).

365 (5) (a) An individual who files a motion to intervene in an adoption proceeding:

366 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;
367 and

368 (ii) may not be granted access to the documents described in Subsection (2), unless the
369 motion to intervene is granted.

370 (b) An order described in Subsection (3)(b) shall:

371 (i) prohibit the individual described in Subsection (3)(b) from inspecting a document
372 described in Subsection (2) that contains identifying information of the adoptive or prospective
373 adoptive parent; and

374 (ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a
375 document described in Subsection (5)(b)(i) after the identifying information described in
376 Subsection (5)(b)(i) is redacted from the document.

377 Section 9. Section **78B-6-807** is amended to read:

378 **78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service**
379 **of summons.**

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

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

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

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

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

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

391 (4) The court may authorize service by publication or mail [~~for cause shown~~] in
392 accordance with the Utah Rules of Civil Procedure.

393 (5) Service by publication is complete one week after publication.

394 (6) Service by mail is complete three days after mailing.

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