

JUDICIARY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE**General Description:**

This bill amends provisions regarding the judiciary and judges.

Highlighted Provisions:

This bill:

- ▶ requires a mayor of a city or town to fill the vacancy of a municipal justice court judge and, until the position is filled, allows the city or town to contract with another jurisdiction for judicial services;
- ▶ requires a county appointing authority to fill the vacancy of a county justice court judge;
- ▶ repeals the provision allowing a will to be deposited with a court for safekeeping during the testator's lifetime;
- ▶ modifies a provision concerning delivery of a will;
- ▶ amends provisions regarding the Online Court Assistance Program;
- ▶ amends provisions regarding an appeal to the district court of a justice court decision;
- ▶ amends a provision regarding an appeal of a small claims court decision;
- ▶ amends provisions regarding jury selection and service; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-1-506, as last amended by Laws of Utah 2008, Chapters 3 and 19**75-2-902**, as repealed and reenacted by Laws of Utah 1998, Chapter 39**77-10a-5**, as last amended by Laws of Utah 2008, Chapters 3 and 382**78A-2-501**, as last amended by Laws of Utah 2014, Chapters 94 and 263**78A-2-502**, as last amended by Laws of Utah 2014, Chapter 387**78A-7-118**, as last amended by Laws of Utah 2016, Chapter 33**78A-8-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3**78B-1-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3**78B-1-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3**78B-1-107**, as last amended by Laws of Utah 2013, Chapter 202**78B-1-110**, as last amended by Laws of Utah 2015, Chapter 17

REPEALS:

75-2-901, as repealed and reenacted by Laws of Utah 1998, Chapter 39

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **20A-1-506** is amended to read:**20A-1-506. Vacancy in the office of justice court judge.**

(1) As used in this section:

(a) "Appointing authority" means:

(i) for a county:

(A) the chair of the county commission in a county having the county commission or expanded county commission form of county government; and

(B) the county executive in a county having the county executive-council form of government; and

(ii) for a city or town, the mayor of the city or town.

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) (a) If a vacancy occurs in the office of a municipal justice court judge before the completion of ~~[his]~~ the judge's term of office, the appointing authority ~~[may]~~:

(i) shall fill the vacancy ~~[by appointment for the unexpired term]~~ by following the procedures and requirements for appointments in Section 78A-7-202; ~~[or]~~ and

(ii) may contract with a justice court judge of the county, an adjacent county, or another municipality within those counties for judicial services until the vacancy is filled.

~~[(b) When the appointing authority chooses to contract under Subsection (2)(a)(ii), it shall ensure that the contract is for the same term as the term of office of the judge whose services are replaced by the contract.]~~

~~[(c)]~~ (b) The appointing authority shall notify the Office of the State Court Administrator in writing of ~~[the]~~ an appointment~~[-resignation, or the contractual agreement for services]~~ of a municipal justice court judge under this section within 30 days after ~~[filling the vacancy]~~ the appointment is made.

(3) (a) If a vacancy occurs in the office of a county justice court judge before the completion of ~~[that]~~ the judge's term of office, the appointing authority ~~[may]~~ shall fill the vacancy ~~[by appointment for the unexpired term]~~ by following the procedures and requirements for appointments in Section 78A-7-202.

(b) The appointing authority shall notify the Office of the State Court Administrator in writing of ~~[any]~~ an appointment of a county justice court judge under this section within 30 days after the appointment is made.

(4) (a) When a vacancy occurs in the office of a justice court judge, the appointing authority shall:

- (i) advertise the vacancy and solicit applications for the vacancy;
- (ii) appoint the best qualified candidate to office based solely upon fitness for office;
- (iii) comply with the procedures and requirements of Title 52, Chapter 3, Prohibiting Employment of Relatives, in making appointments to fill the vacancy; and
- (iv) submit the name of the appointee to the local legislative body.

(b) If the local legislative body does not confirm the appointment within 30 days of submission, the appointing authority may either appoint another of the applicants or reopen the vacancy by advertisement and solicitations of applications.

Section 2. Section **75-2-902** is amended to read:

75-2-902. Duty of custodian of will -- Liability.

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate [~~or to an appropriate court~~]. A person who wilfully fails to deliver a will is liable to [~~any~~] a person aggrieved for [~~any~~] damages that may be sustained by the failure. A person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

Section 3. Section **77-10a-5** is amended to read:

77-10a-5. Grand jurors -- Qualification and selection -- Limits on disclosure.

(1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78B, Chapter 1, Part 1, Jury and Witness Act. Grand jurors shall be selected from the [~~qualified~~] prospective jury list as provided in Section **78B-1-107**.

(2) The names of grand jurors are classified as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 4. Section **78A-2-501** is amended to read:

78A-2-501. Definitions -- Online Court Assistance Program -- Purpose of program -- Online Court Assistance Account -- User's fee.

(1) As used in this part:

(a) "Account" means the Online Court Assistance Account created in this section.

(b) "Board" means the Online Court Assistance Program Policy Board created in Section **78A-2-502**.

(c) "Program" means the Online Court Assistance Program created in this section.

~~[(1)]~~ (2) There is [~~established an online court assistance program~~] created the "Online Court Assistance Program" administered by the Administrative Office of the Courts to provide the public with information about civil procedures and to assist the public in preparing and filing civil pleadings and other papers in:

(a) uncontested divorces;

(b) enforcement of orders in the divorce decree;

(c) landlord and tenant actions;

(d) guardianship actions; and
(e) other types of proceedings approved by the [~~Online Court Assistance Program~~
~~Policy Board~~] board.

~~[(2)]~~ (3) The purpose of the [~~online court assistance~~] program shall be to:

- (a) minimize the costs of civil litigation;
- (b) improve access to the courts; and
- (c) provide for informed use of the courts and the law by pro se litigants.

~~[(3)]~~ (4) (a) An additional \$20 shall be added to the filing fee established by Sections
78A-2-301 and 78A-2-301.5 if a person files a complaint, petition, answer, or response
prepared through the program. There shall be no fee for using the program or for papers filed
subsequent to the initial pleading.

(b) There is created within the General Fund a restricted account known as the Online
Court Assistance Account. The fees collected under this Subsection ~~[(3)]~~ (4) shall be deposited
in the restricted account and appropriated by the Legislature to the Administrative Office of the
Courts to develop, operate, and maintain the program and to support the use of the program
through education of the public.

~~[(4)]~~ (5) The Administrative Office of the Courts shall provide on the front page of the
[~~Online Court Assistance Program~~] program website a listing of all forms and proceedings
available to all pro se litigants within the program.

Section 5. Section 78A-2-502 is amended to read:

**78A-2-502. Creation of policy board -- Membership -- Terms -- Chair -- Quorum
-- Expenses.**

(1) There is created a 13 member policy board to be known as the "Online Court
Assistance Program Policy Board," which shall:

(a) identify the subject matter included in the [~~Online Court Assistance Program~~]
program;

(b) develop information and [~~forms in conformity with the rules of procedure and
evidence; and~~] instructions on how to use the program;

(c) conform court-approved forms for use in the program; and

~~[(c)]~~ (d) advise the Administrative Office of the Courts regarding the administration of
the program.

(2) The voting membership shall consist of:

(a) two members of the House of Representatives designated by the speaker, with one member from each party;

(b) two members of the Senate designated by the president, with one member from each party;

(c) two attorneys actively practicing in domestic relations designated by the Family Law Section of the Utah State Bar;

(d) one attorney actively practicing in civil litigation designated by the Civil Litigation Section of the Utah State Bar;

(e) one court commissioner designated by the chief justice of the Utah Supreme Court;

(f) one district court judge designated by the chief justice of the Utah Supreme Court;

(g) one attorney from Utah Legal Services designated by its director;

(h) one attorney from Legal Aid designated by its director; and

(i) two persons from the Administrative Office of the Courts designated by the state court administrator.

(3) (a) The terms of the members shall be four years and staggered so that approximately half of the board expires every two years.

(b) The board shall meet as needed.

(4) The board shall select one of its members to serve as chair.

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

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 6. Section 78A-7-118 is amended to read:

78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 28 days of:

(a) sentencing, except as provided in Subsection (4)(b); or

(b) a plea of guilty or no contest in the justice court that is held in abeyance.

(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 28 days of:

(a) an order revoking probation;

(b) imposition of a sentence, following a determination that a defendant failed to fulfill the terms of a plea in abeyance agreement;

(c) an order denying a motion to withdraw a plea, if the plea is being held in abeyance and the motion to withdraw the plea is filed within 28 days of the entry of the plea;

(d) a postsentence order fixing total or court ordered restitution; or

(e) an order denying expungement.

(5) The prosecutor is entitled to a hearing de novo in the district court if an appeal is filed within 28 days of the court entering:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;

(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor;

(g) an order granting a motion to withdraw a plea of guilty or no contest;

(h) an order fixing total restitution at an amount less than requested by a crime victim;
or

(i) an order granting an expungement, if the expungement was opposed by the prosecution or a victim before the order was entered.

(6) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (5)(e) or (f) shall be filed within 28 days of the order excluding the evidence.

~~[(6)]~~ (7) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case; or

(b) ~~[with agreement of the parties,]~~ the hearing de novo was on a pretrial order and the parties and the district court [consents to] agree to have the district court retain jurisdiction[;
or].

~~[(c) the defendant enters a plea of guilty or no contest in the district court.]~~

~~[(7)]~~ (8) The district court shall retain jurisdiction over the case on trial de novo.

~~[(8)]~~ (9) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section 7. Section **78A-8-106** is amended to read:

78A-8-106. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within ~~[30]~~ 28 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section **78A-8-108**. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Section 8. Section **78B-1-102** is amended to read:

78B-1-102. Definitions.

As used in this part:

(1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.

(2) "Court" means trial court.

(3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with the power to present and indict a person for a public offense or to try a question of fact.

(4) "Master jury list" means the source lists as prescribed by the Judicial Council under Section **78B-1-106**.

~~[(5)]~~ (5) "~~Qualified~~ Prospective jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.

~~[(5)]~~ (6) "Public necessity" means circumstances in which services performed by the prospective juror to members of the public in either a public or a private capacity cannot adequately be performed by others.

(7) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction and sworn to try and determine by verdict a question of fact.

(8) "Undue hardship" means circumstances in which the prospective juror would:

(a) be required to abandon a person under his or her personal care or incur the cost of substitute care which is unreasonable under the circumstances;

(b) suffer extreme physical hardship due to an illness, injury, or disability; or

(c) incur substantial costs or lost opportunities due to missing an event that was scheduled prior to the initial notice of potential jury service.

Section 9. Section **78B-1-106** is amended to read:

78B-1-106. Master jury list -- Inclusive -- Review -- Renewal -- Public examination.

(1) The Judicial Council shall designate one or more regularly maintained lists of persons residing in each county as the source lists for the master jury list ~~[for that county]~~. The master jury list shall be as inclusive of the adult population ~~[of the county]~~ as is reasonably practicable.

(2) The Judicial Council shall by rule provide for the biannual review of the master

jury list to evaluate ~~[its]~~ the master jury list's inclusiveness of the adult population ~~[of the county]~~.

(3) Not less than once every six months the Administrative Office of the Courts shall renew the master jury list ~~[for a county]~~ by incorporating any additions, deletions, or amendments to the source lists. The Administrative Office of the Courts shall include any additional source lists designated by the Judicial Council upon the next renewal of the master jury list ~~[for a county]~~.

(4) The person having custody, possession, or control of any list used in compiling the master jury list shall make the list available to the Administrative Office of the Courts at all reasonable times without charge.

Section 10. Section **78B-1-107** is amended to read:

78B-1-107. Prospective jury list -- Term of availability -- Juror qualification form -- Content -- Joint jury list for court authorized.

~~[(1) Prospective jurors shall be selected at random from the master jury list and, if qualified, placed on the qualified jury list. Except if necessary to complete service in a particular case, a prospective juror shall remain on the qualified jury list for no longer than six months or for such shorter period established by rule of the Judicial Council. The qualified jury list may be used by all courts within the county, but no person shall be summoned to serve as a juror in more than one court.]~~

(1) When a jury trial is anticipated, the jury clerk shall obtain from the master jury list the number of prospective jurors necessary to qualify jurors to empanel a jury in that case.

(2) Prospective jurors shall be randomly selected from the county in which the trial will be held. A prospective juror shall remain on the prospective jury list until there is no longer a need to empanel a jury in that case.

~~[(2)]~~ (3) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.

~~[(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:]~~

(4) The process shall gather the following from a prospective juror:

(a) ~~[the]~~ confirmation of the prospective juror's name, address, email address, and daytime telephone number ~~[of the prospective juror];~~

(b) ~~[questions suitable for determining]~~ information on whether the prospective juror is competent under statute to serve as a juror; and

(c) the ~~[person's]~~ prospective juror's declaration that the responses to ~~[questions on the qualification form]~~ the requests for information are true to the best of the person's knowledge.

Section 11. Section **78B-1-110** is amended to read:

78B-1-110. Limitations on jury service.

(1) In any two-year period, a person may not:

(a) be required to serve on more than one grand jury;

(b) be required to serve as both a grand and trial juror;

(c) be required to attend court ~~[for prospective jury service]~~ as a trial juror more than one court day, except if necessary to complete service in a particular case; or

(d) if summoned for ~~[prospective]~~ jury service and the summons is complied with as directed, be selected for the ~~[qualified]~~ prospective jury list more than once.

(2) (a) Subsection (1)(d) does not apply to counties of the fourth, fifth, and sixth class and counties of the third class with populations up to 75,000.

(b) (i) All population figures used for this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(ii) If population estimates are not available from the United States Census Bureau, population figures shall be derived from the estimate of the Utah Population Estimates Committee.

Section 12. **Repealer.**

This bill repeals:

Section **75-2-901**, **Deposit of will with court in testator's lifetime.**

Legislative Review Note
Office of Legislative Research and General Counsel