

HB0198S02 compared with HB0198S01

~~deleted text~~ shows text that was in HB0198S01 but was deleted in HB0198S02.

Inserted text shows text that was not in HB0198S01 but was inserted into HB0198S02.

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Representative Merrill F. Nelson proposes the following substitute bill:

ATTORNEY GENERAL RESPONSIBILITY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill addresses the attorney general's constitutional duty to provide advice and representation.

Highlighted Provisions:

This bill:

- ▶ amends the time in which the attorney general must respond to a legislative request for the attorney general's opinion;
- ▶ requires the attorney general to comply in good faith with the duty to provide the required opinion;
- ▶ allows the Legislature to petition the Utah Supreme Court for an extraordinary writ to obtain the required opinion if the attorney general does not provide the opinion;
- ▶ requires the attorney general to eliminate potential conflicts of interest through

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confidentiality and screening procedures;

- ▶ clarifies the attorney general's relationship with potentially adverse clients; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-5-1, as last amended by Laws of Utah 2017, Chapters 295 and 387

ENACTS:

67-5-1.1, Utah Code Annotated 1953

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

Section 1. Section **67-5-1** is amended to read:

67-5-1. General duties.

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(2) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

(3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

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(a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee, when required, upon any question of law relating to the office of the requester:

(a) in accordance with Section 67-5-1.1, to the Legislature or either house [~~and~~];

(b) to any state officer, board, or commission[~~;~~]; and

(c) to any county attorney or district attorney[~~;~~ ~~when required, upon any question of law relating to their respective offices~~];

(8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or

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proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(17) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(18) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

(19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at:

(a) health care facilities that receive payments under the state Medicaid program; and

(b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.

Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;

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(20) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than \$500,000; or

(ii) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report;

(21) (a) submit a written report to the committees described in Subsection (21)(b) that summarizes the status and progress of any lawsuits that challenge the constitutionality of state law that were pending at the time the attorney general submitted the attorney general's last report under this Subsection (21), including any:

(i) settlements reached;

(ii) consent decrees entered; or

(iii) judgments issued; and

(b) at least 30 days before the Legislature's May and November interim meetings, submit the report described in Subsection (21)(a) to:

(i) the Legislative Management Committee;

(ii) the Judiciary Interim Committee; and

(iii) the Law Enforcement and Criminal Justice Interim Committee;

(22) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

(a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

(b) any other information or analysis requested by the rate committee; and

(23) before the end of each calendar year, create an annual performance report for the Office of the Attorney General and post the report on the attorney general's website.

Section 2. Section **67-5-1.1** is enacted to read:

67-5-1.1. Written opinion to the Legislature -- Rebuttable presumption.

(1) When the Legislature or either house requests the attorney general's written legal opinion in accordance with Subsection 67-5-1(7):

(a) the attorney general shall ~~provide the opinion:~~

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~~(i) within 30 days after the day on which the requester makes the request for the attorney general's opinion; or~~

~~(ii) by a date upon which the attorney general and the requester agree;~~

~~(b) the attorney general shall comply in good faith with the requirement to provide the opinion; and~~

~~(c) the Legislature or either house may petition the Utah Supreme Court for an extraordinary writ to obtain the legal opinion if the attorney general does not provide the opinion within the time period described in Subsection 67-5-1(7)(b);~~

~~(2) (a) If, applying concepts from the Rules of Professional Conduct contained in the Supreme Court Rules of Professional Practice, identify any potential conflicts of interest in providing the attorney general's legal opinion {raises} to the Legislature;~~

~~(b) if the attorney general identifies a potential conflict of interest under Subsection (1)(a), the attorney general shall, as soon as practicable after the {attorney general knows or should reasonably know of the potential conflict} identification:~~

~~(i) ensure that the attorney general's office provides each entity or individual involved in the potential conflict competent, privileged, and objective advice or representation by establishing:~~

~~(A) confidentiality procedures; and~~

~~(B) staffing divisions or other structural or administrative safeguards to screen attorneys participating in the preparation of the attorney general's opinion from participation on behalf of any other entity or individual involved in the potential conflict; and~~

~~(ii) provide written notice to each entity or individual involved in the potential conflict {describing} that describes the screening procedures that the attorney general establishes; and~~

~~(c) after complying with Subsections (1)(a) and (b), the attorney general shall provide the attorney general's opinion:~~

~~(i) within 30 days after the day on which the requester makes the request for the opinion; or~~

~~(ii) by a date upon which the attorney general and the requester agree.~~

~~{b}2) There is a presumption that:~~

~~(a) the attorney general's reasonable compliance with {Subsection} Subsections {2}1(a) and (b) satisfies any ethical or professional obligation arising from the potential~~

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conflict of interest~~};~~ and

~~(c)b) { There is a presumption that,}~~ with adequate screening safeguards and procedures in place, the attorney general~~};~~

~~(i) }~~ has an attorney-client relationship with each entity or individual involved in the potential conflict of interest~~};~~ and

~~(ii) };~~

(3) (a) The attorney general shall comply in good faith with the requirement to provide the opinion in accordance with Subsection 67-5-1(7) and this section.

(b) The attorney general may not invoke the potential conflict of interest or attorney-client privilege as grounds to withhold or refuse to provide the legal opinion ~~{described}~~required in Subsection ~~{(1)}~~67-5-1(7) and this section.

(c) The Legislature or either house may petition the Utah Supreme Court for an extraordinary writ to obtain the legal opinion if the attorney general does not provide the opinion within the time period described in Subsection (1)(c).