

SB0318

inserted text shows text that was not in SB0318 but was inserted into SB0318S02

Prosecutorial Misconduct Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor:

General Description:

Highlighted Provisions:

- ▶ provides that certain records of the ~~{Prosecutorial Misconduct}~~ **Prosecutor Conduct**

- ▶ creates an independent commission called the ~~{Prosecutorial Misconduct}~~ **Prosecutor Conduct**

- ▶ addresses the duties and functions of the commission;

SB0318 compared with SB0318S02

- addresses the complaint and investigation process for the commission;
- ~~{ allows the commission to hold a hearing on a complaint; }~~
- allows a prospective employer to inquire as to whether there is a pending investigation regarding a prosecuting attorney;
- provides the ~~{ action that the commission may take upon a determination that prosecutorial }~~ requirements for a finding of professional misconduct ~~{ occurred }~~ by a prosecuting attorney;
- provides reporting requirements when the commission makes a finding of professional misconduct;
- ~~{ addresses }~~ enacts an annual reporting requirement to the ~~{ confidentiality of records of }~~ Legislature regarding complaints and investigations by the commission; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

AMENDS:

63G-2-305 , as last amended by Laws of Utah 2024, Chapters 18, 101, 135, 267, 344, and 522 , as last amended by Laws of Utah 2024, Chapters 18, 101, 135, 267, 344, and 522

ENACTS:

78A-9-201 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78A-9-202 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78A-9-203 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78A-9-204 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78A-9-205 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78A-9-206 , Utah Code Annotated 1953 , Utah Code Annotated 1953

~~{ 78A-9-207 , Utah Code Annotated 1953 , Utah Code Annotated 1953 }~~

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

Section 1. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

SB0318 compared with SB0318S02

- 44 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the
governmental entity with the information specified in Section 63G-2-309;
- 46 (2) commercial information or nonindividual financial information obtained from a person if:
- 48 (a) disclosure of the information could reasonably be expected to result in unfair competitive injury
to the person submitting the information or would impair the ability of the governmental entity to
obtain necessary information in the future;
- 51 (b) the person submitting the information has a greater interest in prohibiting access than the public in
obtaining access; and
- 53 (c) the person submitting the information has provided the governmental entity with the information
specified in Section 63G-2-309;
- 55 (3) commercial or financial information acquired or prepared by a governmental entity to the extent that
disclosure would lead to financial speculations in currencies, securities, or commodities that will
interfere with a planned transaction by the governmental entity or cause substantial financial injury
to the governmental entity or state economy;
- 59 (4) records, the disclosure of which could cause commercial injury to, or confer a competitive
advantage upon a potential or actual competitor of, a commercial project entity as defined in
Subsection 11-13-103(4);
- 62 (5) test questions and answers to be used in future license, certification, registration, employment, or
academic examinations;
- 64 (6) records, the disclosure of which would impair governmental procurement proceedings or give an
unfair advantage to any person proposing to enter into a contract or agreement with a governmental
entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right
of a person to have access to, after the contract or grant has been awarded and signed by all parties:
- 69 (a) a bid, proposal, application, or other information submitted to or by a governmental entity in
response to:
- 71 (i) an invitation for bids;
- 72 (ii) a request for proposals;
- 73 (iii) a request for quotes;
- 74 (iv) a grant; or
- 75 (v) other similar document; or
- 76 (b) an unsolicited proposal, as defined in Section 63G-6a-712;

SB0318 compared with SB0318S02

- 77 (7) information submitted to or by a governmental entity in response to a request for information,
except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a
person to have access to the information, after:
- 80 (a) a contract directly relating to the subject of the request for information has been awarded and signed
by all parties; or
- 82 (b)
- (i) a final determination is made not to enter into a contract that relates to the subject of the request for
information; and
- 84 (ii) at least two years have passed after the day on which the request for information is issued;
- 86 (8) records that would identify real property or the appraisal or estimated value of real or personal
property, including intellectual property, under consideration for public acquisition before any rights
to the property are acquired unless:
- 89 (a) public interest in obtaining access to the information is greater than or equal to the governmental
entity's need to acquire the property on the best terms possible;
- 91 (b) the information has already been disclosed to persons not employed by or under a duty of
confidentiality to the entity;
- 93 (c) in the case of records that would identify property, potential sellers of the described property have
already learned of the governmental entity's plans to acquire the property;
- 96 (d) in the case of records that would identify the appraisal or estimated value of property, the potential
sellers have already learned of the governmental entity's estimated value of the property; or
- 99 (e) the property under consideration for public acquisition is a single family residence and the
governmental entity seeking to acquire the property has initiated negotiations to acquire the property
as required under Section 78B-6-505;
- 102 (9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction
of real or personal property including intellectual property, which, if disclosed prior to completion
of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
- 106 (a) the public interest in access is greater than or equal to the interests in restricting access, including the
governmental entity's interest in maximizing the financial benefit of the transaction; or
- 109 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of
the subject property have already been disclosed to persons not employed by or under a duty of
confidentiality to the entity;

SB0318 compared with SB0318S02

- 112 (10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit
purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
- 115 (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline,
licensing, certification, or registration purposes;
- 117 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
- 119 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
- 121 (d) reasonably could be expected to disclose the identity of a source who is not generally known outside
of government and, in the case of a record compiled in the course of an investigation, disclose
information furnished by a source not generally known outside of government if disclosure would
compromise the source; or
- 125 (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or
orders not generally known outside of government if disclosure would interfere with enforcement or
audit efforts;
- 128 (11) records the disclosure of which would jeopardize the life or safety of an individual;
- 129 (12) records the disclosure of which would jeopardize the security of governmental property,
governmental programs, or governmental recordkeeping systems from damage, theft, or other
appropriation or use contrary to law or public policy;
- 132 (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or
records relating to incarceration, treatment, probation, or parole, that would interfere with the
control and supervision of an offender's incarceration, treatment, probation, or parole;
- 136 (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and
Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons
and Parole, or the Department of Health and Human Services that are based on the employee's or
contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- 141 (15) records and audit workpapers that identify audit, collection, and operational procedures and
methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- 144 (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit
is released;
- 146 (17) records that are subject to the attorney client privilege;
- 147

SB0318 compared with SB0318S02

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

150 (19)

(a)

(i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

152 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

155 (b)

(i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

157 (A) members of a legislative body;

158 (B) a member of a legislative body and a member of the legislative body's staff; or

159 (C) members of a legislative body's staff; and

160 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

162 (20)

(a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

167 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

172 (21) a research request from a legislator to a legislative staff member and research findings prepared in response to the request;

174 (22) drafts, unless otherwise classified as public;

175 (23) records concerning a governmental entity's strategy about:

176 (a) collective bargaining; or

SB0318 compared with SB0318S02

- 177 (b) imminent or pending litigation;
- 178 (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered
by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund,
or similar divisions in other governmental entities;
- 181 (25) records, other than personnel evaluations, that contain a personal recommendation concerning
an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or
disclosure is not in the public interest;
- 184 (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources
that if known would jeopardize the security of those resources or of valuable historic, scientific,
educational, or cultural information;
- 187 (27) records of independent state agencies if the disclosure of the records would conflict with the
fiduciary obligations of the agency;
- 189 (28) records of an institution within the state system of higher education defined in Section 53B-1-102
regarding tenure evaluations, appointments, applications for admissions, retention decisions, and
promotions, which could be properly discussed in a meeting closed in accordance with Title 52,
Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure,
appointments, retention, promotions, or those students admitted, may not be classified as protected
under this section;
- 195 (29) records of the governor's office, including budget recommendations, legislative proposals,
and policy statements, that if disclosed would reveal the governor's contemplated policies or
contemplated courses of action before the governor has implemented or rejected those policies or
courses of action or made them public;
- 199 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue
estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in
these areas;
- 202 (31) records provided by the United States or by a government entity outside the state that are given
to the governmental entity with a requirement that they be managed as protected records if the
providing entity certifies that the record would not be subject to public disclosure if retained by it;
- 206 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body
except as provided in Section 52-4-206;
- 208

SB0318 compared with SB0318S02

- (33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;
- 211 (34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;
- 214 (35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
- 219 (36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;
- 222 (37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:
- 226 (a) the donor requests anonymity in writing;
- 227 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and
- 229 (c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;
- 234 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- 235 (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- 237 (40)
- (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

SB0318 compared with SB0318S02

- 240 (i) unpublished lecture notes;
241 (ii) unpublished notes, data, and information:
242 (A) relating to research; and
243 (B) of:
244 (I) the institution within the state system of higher education defined in Section 53B-1-102; or
246 (II) a sponsor of sponsored research;
247 (iii) unpublished manuscripts;
248 (iv) creative works in process;
249 (v) scholarly correspondence; and
250 (vi) confidential information contained in research proposals;
251 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required
pursuant to Subsection 53B-16-302(2)(a) or (b); and
253 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
254 (41)
(a) records in the custody or control of the Office of the Legislative Auditor General that would reveal
the name of a particular legislator who requests a legislative audit prior to the date that audit is
completed and made public; and
257 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the
Legislative Auditor General is a public document unless the legislator asks that the records in the
custody or control of the Office of the Legislative Auditor General that would reveal the name of
a particular legislator who requests a legislative audit be maintained as protected records until the
audit is completed and made public;
263 (42) records that provide detail as to the location of an explosive, including a map or other document
that indicates the location of:
265 (a) a production facility; or
266 (b) a magazine;
267 (43) information contained in the statewide database of the Division of Aging and Adult Services
created by Section 26B-6-210;
269 (44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child
Welfare Services;

271

SB0318 compared with SB0318S02

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26B-2-709:

(a) information or records held by the Department of Health and Human Services related to a complaint regarding a provider, program, or facility which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health and Human Services from an anonymous complainant regarding a provider, program, or facility;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

SB0318 compared with SB0318S02

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

SB0318 compared with SB0318S02

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

- 340 (a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;
- 346 (b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;
- 353 (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;
- 356 (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or
- 358 (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;
- 360 (60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health and Human Services, to discover Medicaid fraud, waste, or abuse;
- 363 (61) information provided to the Department of Health and Human Services or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);
- 366 (62) a record described in Section 63G-12-210;
- 367 (63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;
- 369 (64) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in

SB0318 compared with SB0318S02

Section 78B-3-403, or inside a human service program as that term is defined in Section 26B-2-101, except for recordings that:

- 374 (a) depict the commission of an alleged crime;
- 375 (b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
- 377 (c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
- 379 (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
- 381 (e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;
- 383 (65) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;
- 386 (66) an audio recording that is:
- 387 (a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;
- 390 (b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:
- 393 (i) is responding to an individual needing resuscitation or with a life-threatening condition; and
- 395 (ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and
- 397 (c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;
- 399 (67) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;
- 403 (68) work papers as defined in Section 31A-2-204;
- 404 (69) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;
- 406 (70) a record submitted to the Insurance Department in accordance with Section 31A-37-201;
- 408 (71) a record described in Section 31A-37-503;

SB0318 compared with SB0318S02

- 409 (72) any record created by the Division of Professional Licensing as a result of Subsection
58-37f-304(5) or 58-37f-702(2)(a)(ii);
- 411 (73) a record described in Section 72-16-306 that relates to the reporting of an injury involving an
amusement ride;
- 413 (74) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political
petition, or on a request to withdraw a signature from a political petition, including a petition or
request described in the following titles:
- 416 (a) Title 10, Utah Municipal Code;
- 417 (b) Title 17, Counties;
- 418 (c) Title 17B, Limited Purpose Local Government Entities - Special Districts;
- 419 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- 420 (e) Title 20A, Election Code;
- 421 (75) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter
registration record;
- 423 (76) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described
in Subsection (74) or (75), in the custody of the lieutenant governor or a local political subdivision
collected or held under, or in relation to, Title 20A, Election Code;
- 426 (77) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims
Guidelines for Prosecutors Act;
- 428 (78) a record submitted to the Insurance Department under Section 31A-48-103;
- 429 (79) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited
under Section 63G-26-103;
- 431 (80) an image taken of an individual during the process of booking the individual into jail, unless:
- 433 (a) the individual is convicted of a criminal offense based upon the conduct for which the individual
was incarcerated at the time the image was taken;
- 435 (b) a law enforcement agency releases or disseminates the image:
- 436 (i) after determining that the individual is a fugitive or an imminent threat to an individual or to
public safety and releasing or disseminating the image will assist in apprehending the individual or
reducing or eliminating the threat; or

439

SB0318 compared with SB0318S02

- (ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding;
- 443 (c) a judge orders the release or dissemination of the image based on a finding that the release or
445 dissemination is in furtherance of a legitimate law enforcement interest; or
- 447 (d) the image is displayed to a person who is permitted to view the image under Section 17-22-30[-] ;
- 448 (81) a record:
- 449 (a) concerning an interstate claim to the use of waters in the Colorado River system;
- 452 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative
453 from another state or the federal government as provided in Section 63M-14-205; and
- 455 (c) the disclosure of which would:
- 457 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River
458 system;
- 459 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best
460 terms and conditions regarding the use of water in the Colorado River system; or
- 461 (iii) give an advantage to another state or to the federal government in negotiations regarding the use of
462 water in the Colorado River system;
- 463 (82) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic
464 Opportunity determines is nonpublic, confidential information that if disclosed would result in
465 actual economic harm to the applicant, but this Subsection (82) may not be used to restrict access to
466 a record evidencing a final contract or approval decision;
- 467 (83) the following records of a drinking water or wastewater facility:
- 468 (a) an engineering or architectural drawing of the drinking water or wastewater facility; and
- 469 (b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or
470 wastewater facility uses to secure, or prohibit access to, the records described in Subsection (83)(a);
- 471 (84) a statement that an employee of a governmental entity provides to the governmental entity as part
472 of the governmental entity's personnel or administrative investigation into potential misconduct
473 involving the employee if the governmental entity:
- 474 (a) requires the statement under threat of employment disciplinary action, including possible
475 termination of employment, for the employee's refusal to provide the statement; and
- 476
- 477

SB0318 compared with SB0318S02

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding;

(85) any part of an application for a Utah Fits All Scholarship account described in Section 53F-6-402 or other information identifying a scholarship student as defined in Section 53F-6-401;

(86) a record:

(a) concerning a claim to the use of waters in the Great Salt Lake;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a person concerning the claim, including a representative from another state or the federal government; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Great Salt Lake;

(ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms and conditions regarding the use of water in the Great Salt Lake; or

(iii) give an advantage to another person including another state or to the federal government in negotiations regarding the use of water in the Great Salt Lake; ~~{f}~~ and

(87) a consumer complaint described in Section 13-2-11, unless the consumer complaint is reclassified as public as described in Subsection 13-2-11(4) ~~{-}~~ ;

(88) a record of the Utah water agent, appointed under Section 73-10g-702:

(a) concerning a claim to the use of waters;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state, a tribe, the federal government, or other government entity as provided in Title 73, Chapter 10g, Part 6, Utah Water Agent; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water;

(ii) harm the ability of the Utah water agent to negotiate the best terms and conditions regarding the use of water; or

(iii) give an advantage to another state, a tribe, the federal government, or other government entity in negotiations regarding the use of water ~~{-}~~ ; and

~~{(89) {a complaint, or a document obtained in relation to a complaint, submitted to the Prosecutorial Misconduct Commission, unless Title 78A, Chapter 9, Part 2, Prosecutorial Misconduct Commission, requires disclosure of, or makes public, the complaint or document.}-}~~

SB0318 compared with SB0318S02

(89) a record created or maintained for an investigation of the Prosecutor Conduct Commission, created in Section 78A-9-202, that contains any personal identifying information of a prosecuting attorney, including:

(a) a complaint, or a document that is submitted or created for a complaint, received by the Prosecutor Conduct Commission; or

(b) a finding by the Prosecutor Conduct Commission.

Section 2. Section 2 is enacted to read:

78A-9-201. Definitions for part.

2. {Prosecutorial Misconduct} Prosecutor Conduct Commission

As used in this part:

(1) "Commission" means the {Prosecutorial Misconduct} Prosecutor Conduct Commission created in Section 78A-9-202.

(2) "Complaint" means:

(a) a written complaint {against} regarding professional misconduct by a {prosecution team member} prosecuting attorney; or

(b) an allegation based on reliable information received in any form, from any source, that alleges, or from which a reasonable inference can be drawn{-} that a {prosecution team member} prosecuting attorney has committed {prosecutorial} professional misconduct.

(3) "Employer" means:

(a) except as provided in Subsection (3)(b), the attorney general, a district attorney, a county attorney, or a municipal attorney who employs the prosecuting attorney; or

(b) the chief executive officer of the political subdivision that employs the prosecuting attorney if the prosecuting attorney is a district or county attorney or a municipal attorney.

{(3)} (4) "Investigation" means an inquiry into {an allegation of prosecutorial misconduct} a complaint.

{(4)} {"Prosecuting attorney" means:-} }

{(a) {the attorney general and an assistant attorney general;-} }

{(b) {a district attorney or deputy district attorney;-} }

{(c) {a county attorney or assistant county attorney; or-} }

{(d) {an attorney authorized to commence an action on behalf of the state.-} }

{(5)} {"Prosecution team member" means:-} }

{(a) {a prosecuting attorney; or-} }

SB0318 compared with SB0318S02

- 531 {~~(b)~~ {~~an employee of the office of the prosecuting attorney;-~~}}
- 534 (5) "Knowingly" means taking an action, or failing to take an action, with the knowledge that the natural or probable consequences are unambiguously prohibited by a legal obligation or professional standard.
- 537 (6) "Legal obligation" means an obligation imposed by the Utah Constitution, the Constitution of the United States, a statute, a rule of procedure or evidence, or a local rule.
- 532 ~~{(6)}~~ (7) {"Prosecutorial"} "Professional misconduct" means conduct committed in the course of a prosecution of a felony offense, a class A misdemeanor offense, or {class A} a class B misdemeanor offense that {potentially violates} :
- 534 {~~(a)~~ {~~a statute, a court rule, or a provision of the Utah Constitution;-~~}}
- 535 {~~(b)~~ {~~an ordinance or policy of a county or municipality; or~~}}
- 542 (a) purposefully, knowingly, or recklessly violated a clear and unambiguous legal obligation or professional standard for a prosecuting attorney; and
- 536 ~~{(e)}~~ (b) {the legal} impacted, or reasonably could have impacted, the substantive or procedural due rights of an individual accused of a crime.
- 546 (8) "Professional standard" means a standard of conduct imposed by Utah Rules of Professional Conduct.
- 548 (9) "Prosecuting attorney" means an attorney who brings a criminal prosecution or delinquency proceeding on behalf of this state or a county or municipality of this state.
- 550 (10) "Purposefully" means taking an action, or failing to take an action, in order to obtain a result that is unambiguously prohibited by a legal obligation or professional standard.
- 552 (11) "Recklessly" means the conduct is a gross deviation from the standard of conduct for an objectively reasonable prosecuting attorney:
- 554 (a) after considering the nature and the circumstances of a prosecuting attorney's conduct; and
- 556 (b) by taking into account whether the prosecuting attorney knew, or should have known:
- 557 (i) based on the prosecuting attorney's experience, of the legal obligation or professional standard; and
- 559 (ii) the prosecuting attorney's conduct was substantially likely to violate a legal obligation or professional standard.
- 561 Section 3. Section 3 is enacted to read:
- 562 78A-9-202. {Prosecutorial Misconduct} Prosecutor Conduct Commission -- Members --
Terms -- Compensation -- Staff and expenses.

SB0318 compared with SB0318S02

- 540 (1) There is created an independent commission called the {~~Prosecutorial Misconduct~~} Prosecutor
541 ~~Conduct~~ Commission.
- 542 (2) The commission is composed of {~~11~~} six members as follows:
- 543 {~~(a) {two members of the House of Representatives, appointed by the speaker of the House of~~
544 ~~Representatives;}~~}
- 545 {~~(b) {two members of the Senate, appointed by the president of the Senate;}~~}
- 546 {~~(c) {two members who are active or retired defense attorneys, who have prosecutorial experience, and~~
547 ~~who are in good standing with the Utah State Bar, appointed by the governor;}~~}
- 548 {~~(d) {two individuals who are not members of the Utah State Bar, appointed by the governor;}~~}
- 549 {~~(e) {an active or retired prosecuting attorney who is in good standing with the Utah State Bar,~~
550 ~~appointed by the governor;}~~}
- 551 {~~(f) {a retired judge, appointed by the governor; and}~~}
- 552 {~~(g)~~} (a) an assistant attorney generalwho prosecutes criminal offenses full-time, appointed by the
553 attorney general{~~:~~} with the advice and consent of the Senate;
- 554 (b) a county or district attorney, or an assistant county or district attorney, who prosecutes criminal
555 offenses full-time, appointed by the Statewide Association of Prosecutors and Public Attorneys with
556 the advice and consent of the Senate;
- 557 (c) a municipal attorney, or an assistant municipal attorney, who prosecutes criminal offenses full-time,
558 appointed by the Statewide Association of Prosecutors and Public Attorneys with the advice and
559 consent of the Senate;
- 560 (d) a retired attorney whose primary caseload as an attorney was criminal defense, appointed by the
561 executive director of the Commission on Criminal and Juvenile Justice with the advice and consent
562 of the Senate; and
- 563 (e) two retired district or appellate court judges, appointed by the governor with the advice and consent
564 of the Senate.
- 565 (3)
- 566 (a) Except as provided in Subsection (4), a member appointed under Subsection (2) shall serve a four-
567 year term.
- 568 (b) A member may serve no more than eight years.
- 569 (4) At the time of appointment, the terms of commission members shall be staggered so that
570 approximately half of commission members' terms expire every two years.

SB0318 compared with SB0318S02

- 560 (5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed
for the unexpired term by the same appointing authority that appointed the member creating the
vacancy.
- 563 (6)
- (a) ~~{A majority of the}~~ Three members of the commission constitutes a quorum.
- 564 (b) If a quorum is present, the action of a majority of the {voting members present} quorum constitutes
the action of the commission.
- 566 (7)
- (a) The commission shall elect annually a chair and a vice chair from the commission's membership to
serve a two-year term.
- 568 (b) A commission member may not serve as chair of the commission for more than three consecutive
terms.
- 570 (8) The commission shall establish guidelines and procedures for the disqualification of any member
from consideration of any matter.
- 572 (9) A member may not receive compensation or benefits for the member's service, but may receive per
diem and travel expenses in accordance with:
- 574 (a) Section 63A-3-106;
- 575 (b) Section 63A-3-107; and
- 576 (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.
- 602 (10) The State Commission on Criminal and Juvenile Justice shall provide:
- 603 (a) staff support to the commission; or
- 578 {(10)} (b) {Upon} funding to a {majority vote} county of the {commission,} second class to provide
staff support for the commission {may:} .
- 579 {(a) {employ an executive director, legal counsel, investigators, and other staff to assist the
commission; and}}
- 581 {(b) {incur other reasonable and necessary expenses within the authorized budget of the commission
and consistent with the duties of the commission.}}
- 605 Section 4. Section 4 is enacted to read:
- 606 **78A-9-203. Functions and duties of the commission.**
- 585 (1) The commission may{÷}
- 586

SB0318 compared with SB0318S02

(a) request that members of the public report instances of ~~{prosecutorial}~~ professional misconduct by a prosecuting attorney to the commission;

(b) receive, initiate, investigate, or hear complaints as described in Section 78A-9-204;

~~{(c) {recommend the action that should be taken to address prosecutorial misconduct by a prosecution team member; and}-}~~

(c) report professional misconduct as described in Section 78A-9-205; and

(d) gather and publish data on claims of ~~{prosecutorial}~~ professional misconduct by prosecuting attorneys in this state.

(2) To enforce the provisions of this part, the commission may:

(a) administer an oath or affirmation;

(b) issue a subpoena, in accordance with the Utah Rules of Civil Procedure, that requires:

(i) the attendance and testimony of a witness; or

(ii) the production of evidence relevant to the investigation; and

(c) take evidence.

(3) A court shall enforce a subpoena issued by the commission, unless the testimony or evidence sought is privileged or protected information under a law of this state.

(4) The commission shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

Section 5. Section 5 is enacted to read:

78A-9-204. Complaint and investigation process.

(1)

(a) A prosecuting attorney shall report:

(i) any alleged professional misconduct by another prosecuting attorney to that prosecuting attorney's employer; and

(ii) any statement by a judge or magistrate alleging that another prosecuting attorney has committed professional misconduct to that prosecuting attorney's employer.

(b) An employer of a prosecuting attorney shall:

(i) investigate any alleged professional misconduct by a prosecuting attorney; and

(ii) submit a complaint regarding the professional misconduct to the commission if the employer determines that the allegation is substantiated.

SB0318 compared with SB0318S02

~~{(1)}~~ (2) An individual may submit a complaint to the commission alleging that a ~~{prosecution team member}~~ prosecuting attorney has committed ~~{prosecutorial}~~ professional misconduct.

~~{(2)}~~ (3) ~~{The commission may, on}~~ On a motion by a member of the commission, the commission may initiate an investigation of alleged ~~{prosecutorial}~~ professional misconduct by a ~~{prosecution team member if:}~~ prosecuting attorney if the commission determines that a complaint, if substantiated, would lead to a finding of professional misconduct by the prosecuting attorney.

~~{(a) {an individual submits a complaint and the commission determines that the complaint has merit; or}}~~

~~{(b) {the commission submits a complaint on behalf of the commission.}}~~

~~{(3) {The commission may decline to investigate any complaint that is received five or more years after the alleged prosecutorial misconduct occurred.}}~~

(4)

(a) The commission may dismiss a complaint at any time if the commission determines that the complaint lacks merit.

(b) If a complaint submitted by an individual is dismissed, the commission shall notify the individual who submitted the complaint.

(5) The commission may investigate a complaint even if the prosecuting attorney has retired or resigned.

~~{(5)}~~ (6) If the commission moves to initiate an investigation of alleged ~~{prosecutorial}~~ professional misconduct by a ~~{prosecution team member}~~ prosecuting attorney, the commission shall:

(a) notify the ~~{prosecution team member}~~ prosecuting attorney and the prosecuting attorney's employer of the investigation; and

(b) provide the ~~{prosecution team member}~~ prosecuting attorney with all information necessary to prepare an adequate response or defense, including the identity of the complainant.

~~{(6)}~~ (7) If the committee dismisses an investigation after notifying the ~~{prosecution team member}~~ prosecuting attorney as described in Subsection (4), the commission shall notify the prosecuting attorney of the dismissal.

(8) A prospective employer may inquire of the commission as to whether there is a pending investigation against a prosecuting attorney.

~~{(7)}~~ (9)

SB0318 compared with SB0318S02

(a) In the course of an investigation, the commission may request that the ~~{prosecution team member}~~ prosecuting attorney testify before the commission.

(b) The ~~{prosecution team member's}~~ prosecuting attorney's counsel may be present during the ~~{prosecution team member's}~~ prosecuting attorney's testimony.

(c) The ~~{prosecution team member}~~ prosecuting attorney may present evidence and material relevant to the complaint.

(10) A governmental entity may provide the commission with a record under Section 63G-2-206.

(11)

(a) A prosecuting agency, and an employee of a prosecuting agency, shall:

(i) cooperate with the commission in an investigation of a prosecuting attorney; and

(ii) respond truthfully to questions posed during the course of an investigation unless:

(A) the information is privileged or protected by statute or court rule; or

(B) the employee asserts the employee's constitutional right to remain silent.

(b) A prosecuting agency may subject an employee to discipline, including termination, if the employee refuses to cooperate with an investigation by the commission.

(c) The dismissal or demotion of a career service employee under Subsection (11)(b) is subject to the requirements of Section 63A-17-306.

Section 6. Section 6 is enacted to read:

78A-9-205. {Hearing process} Finding of professional misconduct -- Reporting of finding.

(1)

(a) Upon an investigation under Section 78A-9-204, the commission may make a finding, by a preponderance of the evidence, that a prosecuting attorney committed professional misconduct.

(b) In determining whether a prosecuting attorney committed professional misconduct under Subsection (1)(a), the commission may consider an affirmative action of the prosecuting attorney or an action that the prosecuting attorney failed to take.

~~{(1)}~~ (2) {The commission shall hold a hearing on a complaint before a quorum of} If the
commission{;} finds that a prosecuting attorney committed professional misconduct:

~~{(2)}~~ (a) {The} the commission shall notify ~~{the prosecution team member and the complainant of the hearing.}~~ :

~~{(3) {At the hearing, the commission may take the testimony of witnesses and receive evidence and material relevant to the complaint.}}~~

SB0318 compared with SB0318S02

637 { (4) { ~~The prosecution team member.~~ } }

638 { (a) { ~~may have counsel present during the hearing; and~~ } }

639 { (b) { ~~cross-examine any witnesses and present evidence to the commission.~~ } }

685 (i) the prosecuting attorney's employer of the commission's finding;

686 (ii) the appropriate law enforcement agency of the commission's finding if the professional misconduct
is likely a criminal offense; and

688 (iii) the Office of Professional Conduct of the commission's finding if the professional misconduct is
likely a violation of the Utah Rules of Professional Conduct; and

640 { (5) } (b) { ~~The~~ the commission { ~~shall keep a transcript~~ may disclose a summary of the { ~~proceedings~~
} commission's investigation and { ~~of the testimony of witnesses at the hearing~~ } finding.

693 (3) Any documents disclosed under Subsection (2) shall maintain the same classification under Title
63G, Chapter 2, Government Records Access and Management Act.

695 (4) The commission may not disclose information or evidence under Subsection (2) that is:

696 (a) protected from disclosure by court order or a legal privilege; or

697 (b) given after having been issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493
(1967).

699 (5) A finding by the commission that a prosecuting attorney committed professional misconduct may
only be made public if:

701 (a) a governmental entity with a record of the finding is required to make the record public under Title
63G, Chapter 2, Government Records Access and Management Act;

704 (b) the Office of Professional Conduct discloses the commission's finding to the public due to a
disciplinary action against the prosecuting attorney as a result of the commission's finding; or

707 (c) a prosecuting agency brings a criminal prosecution against the prosecuting attorney as a result of the
commission's finding.

709 (6) The commission may not discipline or sanction a prosecuting attorney for any professional
misconduct.

711 Section 7. Section 7 is enacted to read:

712 **78A-9-206. { Action by the commission } Annual reporting requirement to Legislature.**

644 { (1) { ~~If the commission determines after an investigation that a prosecution team member has~~
committed prosecutorial misconduct. } }

646

SB0318 compared with SB0318S02

{(a) {the commission shall notify the prosecution team member and the complainant of the commission's decision; and}-}

648 {(b) {the commission may:-}}

649 {(i) {notify the proper law enforcement agency if the prosecutorial misconduct is criminal conduct; or}-}

651 {(ii) {notify the Office of Professional Conduct of the Utah State Bar if the prosecution team member is a prosecuting attorney.-}}

653 {(2) {If the commission determines that a prosecution team member has not committed prosecutorial misconduct, the commission shall notify the prosecution team member and the complainant of the commission's decision.-}}

656 {(3)} (1) {The} Before November 1 of each year, the commission shall {issue a} report {regarding} to the {commission's investigation} Law Enforcement and {decision} Criminal Justice Interim Committee and {make} the {report available to the public.} Judiciary Interim Committee on:

715 (a) the number of complaints received;

716 (b) the general nature of the complaints;

717 (c) the number of complaints dismissed without an investigation;

718 (d) the number of complaints investigated;

719 (e) the general findings and outcomes of investigations; and

720 (f) the name of any prosecuting agency that refused, without reasonable cause, to cooperate in an investigation by the commission.

658 {(4)} (2) The commission may not {discipline or sanction} include any personal identifying information regarding a prosecuting attorney {for any prosecutorial misconduct} in a report described in Subsection (1).

660 Section 8. Section 8 is enacted to read:

661 **78A-9-207. Confidentiality of records.**

662 (1) A complaint, and any document obtained in connection with the complaint, becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the issuance of a report by the commission under Section 78A-9-206.

666 (2) A complaint, or a document obtained in connection with the complaint, that is not public under Subsection (1) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

SB0318 compared with SB0318S02

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Section 8. **Effective date.**

Effective Date.

This bill takes effect on May 7, 2025.

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