

HB0414S01 compared with HB0414

~~{deleted text}~~ shows text that was in HB0414 but was deleted in HB0414S01.

inserted text shows text that was not in HB0414 but was inserted into HB0414S01.

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Senator John L. Valentine proposes the following substitute bill:

LEGISLATIVE SUBPOENA AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: ~~{_____}~~ John L. Valentine

LONG TITLE

General Description:

This bill amends provisions relating to a legislative subpoena.

Highlighted Provisions:

This bill:

- ▶ ~~{describes}~~ defines terms;
- ▶ describes the nature and purpose of a legislative subpoena;
- ▶ ~~{makes it a class A misdemeanor for a person to disobey or fail to comply with}~~ establishes a process for the subject of a legislative subpoena ~~{or}~~ to ~~{fail to testify in response to}~~ challenge a legislative subpoena ~~{in relation to a matter upon which the person may be lawfully interrogated;}~~ describes methods of enforcing} before a legislative review

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committee:

- ▶ provides that a legislative review committee has the sole and final authority to hear and rule on a challenge to a legislative subpoena;
- ▶ describes the ~~{duties of a court in relation to enforcing}~~ grounds upon which the subject of a subpoena may challenge a legislative subpoena;
- ▶ describes the action that a legislative review committee may take after a hearing on a challenge to a legislative subpoena;
- ▶ establishes a ~~{presumption}~~ process for the issuer of a legislative subpoena to file a motion with a legislative review committee to find a person in civil contempt of the Legislature and to compel obedience to the legislative subpoena;
- ▶ describes the action that a legislative ~~{subpoena is valid and enforceable;}~~ →

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on;

- ▶ provides for a legislative subpoena ~~;~~ ~~and~~ to be reissued as a court subpoena in order to assist with enforcement of the subpoena outside of Utah;
- ▶ establishes and describes the membership and functioning of a legislative review committee;
- ▶ provides for the ~~appeal~~ civil enforcement of ~~a district court decision in relation to~~ a legislative subpoena by a court; and
- ▶ establishes and describes the class A misdemeanor crime of criminal contempt of the Legislature.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-14-1, as last amended by Laws of Utah 2013, First Special Session, Chapter 1

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ENACTS:

36-14-5.3, Utah Code Annotated 1953

36-14-5.5, Utah Code Annotated 1953

36-14-7, Utah Code Annotated 1953

REPEALS AND REENACTS:

36-14-5, as last amended by Laws of Utah 2013, First Special Session, Chapter 1

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

Section 1. Section 36-14-1 is amended to read:

36-14-1. Definitions.

As used in this chapter:

(1) "Disputative motion" means:

(a) a motion to quash a legislative subpoena; or

(b) a motion for a protective order in relation to a legislative subpoena.

~~[(1)]~~ (2) "Issuer" means a person authorized to issue a subpoena by this chapter.

~~[(2)]~~ (3) "Legislative body" means:

(a) the Legislature;

(b) the House or Senate; or

(c) any committee or subcommittee of the Legislature, the House, or the Senate.

~~[(3)]~~ (4) "Legislative office" means the Office of Legislative Research and General Counsel, Office of the Legislative Fiscal Analyst, and the Office of the Legislative Auditor General.

(5) "Legislative review committee" means:

(a) a committee consisting of each member of the House Management Committee if the subpoena is issued by:

(i) the speaker of the House;

(ii) a chair of any House committee or House subcommittee; or

(iii) a person described in Subsections 36-14-2(1)(i) through (l) on behalf of the House or on behalf of a person described in Subsection (5)(a)(i) or (ii);

(b) a committee consisting of each member of the Senate Management Committee if the subpoena is issued by:

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(i) the president of the Senate;

(ii) a chair of any Senate committee or Senate subcommittee; or

(iii) a person described in Subsections 36-14-2(1)(i) through (l) on behalf of the Senate or on behalf of a person described in Subsection (5)(b)(i) or (ii); or

(c) a committee consisting of each member of the Legislative Management Committee for a legislative subpoena that is not described in Subsection (5)(a) or (b).

~~[(4)]~~ (6) "Legislative staff member" means an employee or independent contractor of a legislative office.

~~[(5)]~~ (7) "Legislative subpoena" means a subpoena issued by an issuer on behalf of a legislative body or legislative office and includes:

(a) a subpoena requiring a person to appear and testify at a time and place designated in the subpoena;

(b) a subpoena requiring a person to:

(i) appear and testify at a time and place designated in the subpoena; and

(ii) produce accounts, books, papers, documents, electronically stored information, or tangible things designated in the subpoena; and

(c) a subpoena requiring a person to produce accounts, books, papers, documents, electronically stored information, or tangible things designated in the subpoena at a time and place designated in the subpoena.

~~[(6)]~~ (8) "Special investigative committee" is as defined in Subsection 36-12-9(1).

Section ~~[(1)]~~ 2. Section **36-14-5** is repealed and reenacted to read:

36-14-5. Legislative subpoenas -- Challenges -- Enforcement.

(1) A legislative subpoena:

(a) is an order issued by the legislative branch of state government, backed by the power vested in the Legislature under the Utah Constitution, and backed by the authority of state law, to enable the Legislature to fulfill ~~fits~~ the Legislature's constitutional and statutory duties and to exercise ~~fits~~ the Legislature's constitutional and statutory power, to the fullest extent, in the interests of the citizens of Utah; and

(b) is not a mere discovery device.

(2) ~~[(a) If a person disobeys or fails to comply with]~~ A legislative review committee has the sole authority to hear and decide a disputative motion.

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(3) (a) A person may not file with a court, and a court does not have jurisdiction to hear or decide, a disputative motion or any other motion or action challenging the scope, breadth, or validity of a legislative subpoena.

(b) Except as expressly authorized by this section, a person may not take legal action to challenge or limit a legislative subpoena.

(c) If a person attempts to take legal action that is not expressly authorized by this section to challenge or limit a legislative subpoena, ~~for if a person appears pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, that person is in contempt of the Legislature.~~ (b) Contempt of the Legislature is a class A misdemeanor. ~~(3) the person:~~

(i) is not relieved from the duty to fully, strictly, and timely comply with the legislative subpoena; and

(ii) is subject to the criminal penalty described in Section 36-14-7 if the person fails to fully, strictly, and timely comply with the legislative subpoena.

(4) A person may file a disputative motion only upon the grounds that the legislative subpoena seeks an item, information, or testimony that is protected under:

(a) the United States Constitution or the Utah Constitution; or

(b) a recognized common law privilege that has not been waived.

(5) A person who files a disputative motion shall file the disputative motion by serving the disputative motion on the legislative general counsel:

(a) except as provided in Subsection (5)(b), before the day on which the legislative subpoena requires compliance; or

(b) if the disputative motion relates solely to a question asked while the person subject to the subpoena is in the process of testifying in response to the legislative subpoena, within one business day after the day on which the question is asked.

(6) A legislative review committee:

(a) shall, upon receipt of a timely disputative motion that complies with this section, schedule a hearing;

(b) shall give the person who filed the disputative motion described in Subsection (6)(a) notice and an opportunity to be heard; and

(c) may conduct the hearing in the manner, and in accordance with any rules, that the

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legislative review committee determines is appropriate.

(7) A legislative review committee may summarily dismiss a disputative motion that is not timely filed or does not comply with the requirements of this section.

(8) If a person files a disputative motion, the person is not relieved from the duty to fully and timely comply with all portions of the legislative subpoena that are not expressly challenged in the disputative motion.

(9) After a hearing on a disputative motion, the legislative review committee may do one or more of the following:

(a) quash the legislative subpoena;

(b) modify the legislative subpoena;

(c) grant a protective order in relation to all or part of the legislative subpoena;

(d) order the issuer to issue another subpoena; or

(e) order the subject of the legislative subpoena to comply with the legislative subpoena or a portion of the legislative subpoena.

(10) If a person disobeys or fails to comply with a legislative subpoena, or appears pursuant to a legislative subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the issuer may ~~do any or all of the following:~~ (a) file a motion for

an order ~~file with the legislative review committee a motion to find the person in civil contempt of the Legislature and~~ to compel obedience to the subpoena ~~with the district court;~~

~~_____ (b) refer the matter for criminal prosecution by the attorney general, the Salt Lake County district attorney, or a county attorney or district attorney where the person resides or has a business presence; or (c) pursue any other legal remedy. (4) If a person files a~~

~~motion to quash a legislative subpoena, files a motion for a protective order, or takes other legal action to challenge, delay, or limit a legislative subpoena: (a) the person is not~~

~~relieved from the duty to timely comply with the portions of~~ by delivering the motion to the

~~legislative {subpoena that are not challenged by the motion or other legal action; and (b)~~

~~the issuer may do one or both of the following: (i) file a motion for an order to compel~~

~~obedience to the subpoena with the district court; or (ii) pursue any other legal remedy.~~

~~_____ (5) (a) Upon~~ general counsel.

(11) A legislative review committee:

(a) shall, upon receipt of ~~{any motion relating to a legislative subpoena, and in defense~~

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~~of the Legislature's power to investigate as an independent branch of government, the court shall expedite the hearing and decision on the motion. (b) A court shall take immediate action to enforce a legislative subpoena to the full extent permitted by law and to the full extent described in the legislative subpoena. (c) A court shall enforce a legislative subpoena by: (i) ordering the person named in the subpoena to comply with the subpoena; and (ii) taking the action described in Sections 78B-6-311 and 78B-6-312. (6) (a) There is a presumption that a legislative subpoena is valid and enforceable. (b) A court may not quash a legislative subpoena, limit the scope or breadth of a legislative subpoena, or place any other restriction or limitation on a legislative subpoena, unless, and only to the extent that, a person challenging the subpoena overcomes the presumption; a motion described in Subsection (6)(a) by proving, by clear and convincing evidence; (10), schedule a hearing;~~

(b) shall give the person against whom a motion described in Subsection (10) is filed notice and an opportunity to be heard; and

(c) may conduct the hearing in the manner, and in accordance with any rules, that the legislative subpoena requires disclosure of: (i) a trade secret; or (ii) information that is privileged, unless an exception to, or waiver of, the privilege applies. (7) Nothing in this section prevents an issuer from seeking an extraordinary writ to enforce a legislative subpoena. (8) Any party aggrieved by a decision of a court under this section may appeal the decision directly to the Utah Supreme Court. (9) review committee determines is appropriate.

(12) After a hearing on a motion described in Subsection (10), the legislative review committee may do one or more of the following:

- (a) quash the legislative subpoena;
- (b) modify the legislative subpoena;
- (c) grant a protective order in relation to all or part of the legislative subpoena;
- (d) order the issuer to issue another subpoena;
- (e) order the subject of the legislative subpoena to comply with the legislative subpoena or a portion of the legislative subpoena;
- (f) find the person in civil contempt of the Legislature and impose a civil fine on the person of up to \$1,000;
- (g) refer the matter for criminal prosecution;

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(h) file with the district court a motion for an order to compel obedience to the legislative subpoena; or

(i) pursue any other legal remedy, including an extraordinary writ.

(13) The civil fine described in Subsection (12)(f) is in addition to any other civil or criminal penalty that may be imposed against the subject of the legislative subpoena.

(14) (a) The issuer of a legislative subpoena may, in order to enforce or increase the likelihood of enforcement of a legislative subpoena outside of ~~{the state}~~ Utah, petition a Utah court to issue the legislative subpoena as a court-issued subpoena.

(b) Upon receipt of a petition described in Subsection (~~{9}~~14)(a), a Utah court may issue the legislative subpoena as a court-ordered subpoena.

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~~Legislative Review Note as of 2-25-14 12:06 PM~~

~~Office of Legislative Research and General Counsel~~ Section 3. Section 36-14-5.3 is enacted to read:

36-14-5.3. Legislative review committee.

(1) A majority of the total members of a legislative review committee constitutes a quorum.

(2) A majority vote of a quorum present at a meeting of a legislative review committee constitutes the action of the committee.

(3) (a) The speaker of the House is the chair of a legislative review committee described in Subsection (5)(a).

(b) The president of the Senate is the chair of a legislative review committee described in Subsection 36-14-1(5)(b).

(c) During an even-numbered year, the speaker of the House is the chair of a legislative review committee described in Subsection 36-14-1(5)(c).

(d) During an odd-numbered year, the president of the Senate is the chair of a legislative review committee described in Subsection 36-14-1(5)(c).

(4) (a) If there is a tie vote in a legislative review committee described in Subsection 36-14-1(5)(a), the speaker of the House shall break the tie.

(b) If there is a tie vote in a legislative review committee described in Subsection

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36-14-1(5)(b), the president of the Senate shall break the tie.

(c) (i) If there is a tie vote in a legislative review committee described in Subsection 36-14-1(5)(c), the speaker of the House and the president of the Senate shall break the tie.

(ii) If the vote of the speaker of the House and the president of the Senate results in a tie, the motion fails.

(5) (a) The decision of a legislative review committee is final and is not subject to review by a court.

(b) Subsection (5)(a) does not prohibit a legislative review committee from seeking civil enforcement of a subpoena under Section 36-14-5.5.

Section 4. Section 36-14-5.5 is enacted to read:

36-14-5.5. Civil enforcement of legislative subpoena by a court.

(1) A legislative review committee may:

(a) file with the district court a motion for an order to compel obedience to:

(i) a legislative subpoena; or

(ii) an order of a legislative review committee; or

(b) pursue any other legal remedy, including an extraordinary writ.

(2) Upon receipt of any action or motion described in Subsection (1), the court shall:

(a) grant deference to the Legislature's power, including the power to investigate, as an independent branch of government; and

(b) expedite the hearing and decision on the action or motion.

(3) A court shall take immediate action to enforce a legislative subpoena or an order of a legislative review committee to the full extent permitted by law and to the full extent described in the legislative subpoena or the order of the legislative review committee.

(4) A court shall enforce a legislative subpoena or an order of a legislative review committee by:

(a) ordering the person named in the subpoena or the order to comply with the legislative subpoena or order; and

(b) taking the action described in Sections 78B-6-311 and 78B-6-312.

(5) Any penalty imposed by a court to enforce a legislative subpoena or an order of a legislative review committee, including a penalty imposed under Subsection (4), is in addition to any other civil or criminal penalty imposed under this chapter.

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(6) A court that takes any action to enforce a legislative subpoena or an order of a legislative review committee shall order the subject of the subpoena to pay costs and reasonable attorney fees to the Legislature, including costs of and attorney fees relating to an appeal described in Subsection (7).

(7) Any party aggrieved by a decision of a court under this section may appeal the decision directly to the Utah Supreme Court.

Section 5. Section 36-14-7 is enacted to read:

36-14-7. Criminal contempt of Legislature.

(1) A person is guilty of criminal contempt of the Legislature if the person:

(a) disobeys or fails to comply with a legislative subpoena; or

(b) appears pursuant to a legislative subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated.

(2) Criminal contempt of the Legislature is a class A misdemeanor.

(3) A person is not guilty of a violation of Subsection (1), if:

(a) the person timely files a disputative motion with the legislative review committee, in accordance with Section 36-14-5;

(b) the motion described in Subsection (3)(a) is based on a claim, made in good faith, that the legislative subpoena seeks an item, information, or testimony that is protected under the United States Constitution, the Utah Constitution, or a recognized common law privilege that has not been waived;

(c) (i) the legislative review committee has not issued a decision on the motion described in Subsection (3)(a);

(ii) the legislative review committee grants the motion described in Subsection (3)(a), provided that, if the legislative review committee grants a protective order, the person fully and strictly complies with all aspects of the legislative subpoena for which the person sought a protective order but for which a protective order was denied, within seven days, or a different time ordered by the legislative review committee, after the day on which the legislative review committee grants the protective order; or

(iii) the legislative review committee denies the motion described in Subsection (3)(a) and the person fully complies with the subpoena within seven days, or a different time ordered by the legislative review committee, after the day on which the legislative review committee

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denies the motion; and

(d) the person fully, strictly, and timely provides all information, items, and testimony that are responsive to the legislative subpoena and are not subject to a good faith claim described in Subsections (3)(a) and (b).

(4) A criminal action under this section may be brought by the attorney general, the Salt Lake County district attorney, or a county attorney or district attorney where the defendant resides or has a business presence.