

HB0386S02 compared with HB0386S01

~~text~~ shows text that was in HB0386S01 but was deleted in HB0386S02.

Inserted text shows text that was not in HB0386S01 but was inserted into HB0386S02.

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Senator Daniel W. Thatcher proposes the following substitute bill:

ATTORNEY GENERAL AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies provisions related to the duties and powers of the attorney general.

Highlighted Provisions:

This bill:

- ▶ requires the attorney general to provide an annual performance report;
- ▶ addresses the purposes for which the attorney general may authorize certain law enforcement officers to use a state issued vehicle; and
- ▶ creates the Asset Seizure Holding ~~Account~~Fund.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

24-2-103, as enacted by Laws of Utah 2013, Chapter 394

67-5-1, as last amended by Laws of Utah 2016, Chapter 120

67-5-23, as last amended by Laws of Utah 2014, Chapter 26

ENACTS:

67-5-36, Utah Code Annotated 1953

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

Section 1. Section **24-2-103** is amended to read:

24-2-103. Property seized by a peace officer -- Custody and control of property.

(1) (a) When property is seized by a peace officer, the peace officer or the officer's employing agency shall provide a receipt to the person from whom the property was seized.

(b) The receipt shall describe the:

(i) property seized;

(ii) date of seizure; and

(iii) name and contact information of the officer's employing agency.

(c) A copy of the receipt shall be maintained by the agency.

(d) If [~~custody of the~~] the seizing agency transfers the property [~~is transferred~~] to another agency, the seizing agency shall provide the receiving agency with a copy of the receipt [~~under~~] described in Subsection (1)(a) [~~shall be provided with~~] at the time the seizing agency transfers the property.

(2) The agency responsible for maintaining the property shall:

(a) hold all seized property in safe custody until it can be disposed of as provided in this title; and

(b) maintain a record of the property that includes:

(i) a detailed inventory of all property seized;

(ii) the name of the person from whom it was seized; and

(iii) the agency's case number or, if the property was transferred from another agency, the seizing agency's case number.

(3) Property seized under this title is not recoverable by replevin, but is considered in

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the agency's custody subject only to the orders of the court or the official having jurisdiction.

(4) All controlled substances or other contraband that is seized by a peace officer may be processed for evidentiary or investigative purposes, including sampling or other preservation procedure prior to disposal or destruction.

(5) (a) An agency [~~shall deposit~~] that seizes property under this part in the form of cash or other readily negotiable instruments [~~into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation~~] shall remit the property to the attorney general.

(b) The seizing agency shall notify the attorney general when the property is required to be released under this part.

(c) The attorney general shall release the property to the seizing agency upon receipt of:

(i) a notice described in Subsection (5)(b); or

(ii) a notice from a court requiring the release of the property.

~~(b)~~ (d) Each agency shall have written policies for the identification, tracking, management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of seized property to any employee of the agency.

(6) If a peace officer or the officer's employing agency records an interview of a minor child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of the last recording unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.

(7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act, governs the disposition of property held by a pawn or secondhand business in the course of its business.

Section 2. 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

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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:

(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 to the Legislature or either house and to any state officer, board, or commission, and 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

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(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 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

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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;

(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; ~~and~~

(21) 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~~

(22) 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 3. Section **67-5-23** is amended to read:

67-5-23. Use of state vehicles for law enforcement officers.

~~[(1) The]~~ Subject to rules adopted by the Division of Fleet Operations under Section 63A-9-401, the attorney general may authorize a law enforcement [officers] officer, as defined [under] in Section 53-13-103, who [are employees in] is an employee of the Office of the Attorney General to use a state issued vehicle for official and [commuter] personal use.

~~[(2) An employee shall use, and the attorney general shall authorize the use of, a vehicle under Subsection (1) subject to the rules adopted by the Division of Fleet Operations in accordance with Section 63A-9-401.]~~

Section 4. Section **67-5-36** is enacted to read:

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67-5-36. Asset Seizure Holding ~~{Account}~~Fund -- Creation -- Management.

(1) There is created ~~{within the General Fund a restricted account}~~~~an agency fund~~ known as the "Asset Seizure Holding ~~{Account}~~Fund."

(2) (a) The ~~{restricted account}~~agency fund shall be funded by cash or readily negotiable instruments that a seizing agency remits to the attorney general under Section 24-2-103.

(b) The attorney general shall deposit all funds the attorney general receives under Section 24-2-103 into the ~~{restricted account}~~agency fund.

(3) The state treasurer shall invest funds in the ~~{account}~~fund in accordance with Title 51, Chapter 7, State Money Management Act, except that the state treasurer shall deposit all interest and other earnings derived from the investment into the ~~{account}~~fund in order to protect the funds from commingling, loss, or devaluation.

(4) The attorney general shall maintain the funds in the ~~{account}~~fund:

(a) in accordance with Subsection 24-2-103(2); and

(b) until the attorney general receives a notice described in Subsection 24-2-103(5).