

1                   **ATTORNEY GENERAL AUTHORITY AMENDMENTS**

2                                   2021 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Brian S. King**

5                                   Senate Sponsor: \_\_\_\_\_

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends provisions relating to the attorney general's authority.

10                  **Highlighted Provisions:**

11                  This bill:

12                   ▶ places limitations on the circumstances when the attorney general may participate as  
13                  amicus curiae (friend of the court) in a proceeding;

14                   ▶ requires the attorney general to consult with, and obtain the consent of, the governor  
15                  before taking action, or participating as amicus curiae, in relation to certain civil  
16                  action; and

17                   ▶ makes technical changes.

18                  **Money Appropriated in this Bill:**

19                  None

20                  **Other Special Clauses:**

21                  None

22                  **Utah Code Sections Affected:**

23                  AMENDS:

24                   **67-5-1**, as last amended by Laws of Utah 2020, Chapter 343

25                   **67-5-17**, as enacted by Laws of Utah 2000, Chapter 212

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



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

29 **67-5-1. General duties.**

30 The attorney general shall:

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

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

38 (3) after judgment on any cause [~~referred to~~] described in Subsection (2), direct the  
39 issuance of process as necessary to execute the judgment;

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

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

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

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

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

53 (6) exercise supervisory powers over the district and county attorneys of the state in all  
54 matters pertaining to the duties of the district and county attorneys' offices, including the  
55 authority to:

56 (a) require a district or county attorney of the state to, upon request, report on the status  
57 of public business entrusted to the district or county attorney's charge; or

58 (b) review investigation results de novo and file criminal charges, if warranted, in any

59 case involving a first degree felony, if:

60 (i) a law enforcement agency submits investigation results to the county or district  
61 attorney of the jurisdiction where the incident occurred and the county or district attorney:

62 (A) declines to file criminal charges; or

63 (B) fails to screen the case for criminal charges within six months of the law  
64 enforcement agency's submission of the investigation results; and

65 (ii) after consultation with the county or district attorney of the jurisdiction where the  
66 incident occurred, the attorney general reasonably believes action by the attorney general would  
67 not interfere with an ongoing investigation or prosecution by the county or district attorney of  
68 the jurisdiction where the incident occurred;

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

71 (a) in accordance with Section 67-5-1.1, to the Legislature or either house;

72 (b) to any state officer, board, or commission; and

73 (c) to any county attorney or district attorney;

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

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

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

86 (11) when in the attorney general's opinion it is necessary for the collection or  
87 enforcement of any judgment, institute and prosecute on behalf of the state any action or  
88 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment  
89 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of

90 Examiners, out of any money not otherwise appropriated;

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

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

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

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

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

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

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

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

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

117 (b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C.  
118 Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;

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

- 121 (i) cost the state more than \$500,000; or
- 122 (ii) require the state to take legally binding action that would cost more than \$500,000
- 123 to implement; and
- 124 (b) if the meeting is closed, include an estimate of the state's potential financial or other
- 125 legal exposure in that report;
- 126 (21) (a) submit a written report to the committees described in Subsection (21)(b) that
- 127 summarizes any lawsuit or decision in which a court or the Office of the Attorney General has
- 128 determined that a state statute is unconstitutional or unenforceable since the attorney general's
- 129 last report under this Subsection (21), including any:
  - 130 (i) settlements reached;
  - 131 (ii) consent decrees entered;
  - 132 (iii) judgments issued;
  - 133 (iv) preliminary injunctions issued;
  - 134 (v) temporary restraining orders issued; or
  - 135 (vi) formal or informal policies of the Office of the Attorney General to not enforce a
  - 136 law; and
- 137 (b) at least 30 days before the Legislature's May and November interim meetings,
- 138 submit the report described in Subsection (21)(a) to:
  - 139 (i) the Legislative Management Committee;
  - 140 (ii) the Judiciary Interim Committee; and
  - 141 (iii) the Law Enforcement and Criminal Justice Interim Committee;
- 142 (22) if the attorney general operates the Office of the Attorney General or any portion
- 143 of the Office of the Attorney General as an internal service fund agency in accordance with
- 144 Section 67-5-4, submit to the rate committee established in Section 67-5-34:
  - 145 (a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and
  - 146 (b) any other information or analysis requested by the rate committee;
- 147 (23) before the end of each calendar year, create an annual performance report for the
- 148 Office of the Attorney General and post the report on the attorney general's website;
- 149 (24) ensure that any training required under this chapter complies with Title 63G,
- 150 Chapter 22, State Training and Certification Requirements;
- 151 (25) notify the legislative general counsel in writing within three business days after

152 the day on which the attorney general is officially notified of a claim, regardless of whether the  
153 claim is filed in state or federal court, that challenges:

- 154 (a) the constitutionality of a state statute;
- 155 (b) the validity of legislation; or
- 156 (c) any action of the Legislature; and

157 (26) (a) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a  
158 special advisor to the Office of the Governor and the Office of the Attorney General in matters  
159 relating to Native American and tribal issues to:

- 160 (i) establish outreach to the tribes and affected counties and communities; and
- 161 (ii) foster better relations and a cooperative framework; [~~and~~]
- 162 (b) annually report to the Executive Offices and Criminal Justice Appropriations

163 Subcommittee regarding:

- 164 (i) the status of the work of the special advisor described in Subsection (26)(a); and
- 165 (ii) whether the need remains for the ongoing appropriation to fund the special advisor  
166 described in Subsection (26)(a)[~~;~~]; and

167 (27) file, join, or otherwise participate as amicus curiae in a civil, criminal, or  
168 administrative matter, only to the extent as necessary to support or protect state interests as  
169 reflected by:

- 170 (a) the Utah Constitution;
- 171 (b) state statute;
- 172 (c) legislative resolution;
- 173 (d) administrative rule; or
- 174 (e) a policy of the governor that is not inconsistent with a provision described in

175 Subsections (27)(a) through (d).

176 Section 2. Section **67-5-17** is amended to read:

177 **67-5-17. Attorney-client relationship.**

178 (1) When representing the governor, lieutenant governor, auditor, or treasurer, or when  
179 representing an agency under the supervision of any of those officers, the attorney general  
180 shall:

- 181 (a) keep the officer or the officer's designee reasonably informed about the status of a  
182 matter and promptly comply with reasonable requests for information;

183 (b) explain a matter to the extent reasonably necessary to enable the officer or the  
184 officer's designee to make informed decisions regarding the representation;

185 (c) abide by the officer's or designee's decisions concerning the objectives of the  
186 representation and consult with the officer or designee as to the means by which ~~[they]~~ the  
187 objectives are to be pursued; and

188 (d) jointly by agreement, establish protocols with the officer to facilitate  
189 communications and working relationships with the officer or agencies under the officer's  
190 supervision.

191 (2) Nothing in Subsection (1) modifies or supercedes any independent legal authority  
192 granted specifically by statute to the attorney general.

193 (3) When the attorney general institutes or maintains a civil enforcement action on  
194 behalf of the state ~~[of Utah]~~ that is not covered under Subsection (1), the attorney general shall:

195 (a) fully advise the governor, as the officer in whom the executive authority of the state  
196 is vested, before instituting the action, entering into a settlement or consent decree, or taking an  
197 appeal; and

198 (b) keep the governor reasonably informed about the status of the matter and promptly  
199 comply with reasonable requests for information.

200 (4) In a civil action not ~~[covered under]~~ described in Subsection (1) or (3), the attorney  
201 general shall:

202 (a) before initiating or pursuing the action:

203 (i) consult with the governor and explain in writing how the action is necessary to  
204 support or protect state interests as reflected by:

205 (A) the Utah Constitution;

206 (B) state statute;

207 (C) legislative resolution;

208 (D) administrative rule; or

209 (E) a policy of the governor that is not inconsistent with a provision described in  
210 Subsections (4)(a)(i)(A) through (D); and

211 (ii) obtain the governor's approval for initiating or pursuing the action;

212 (b) before filing, joining, or otherwise participating as amicus curiae:

213 (i) consult with the governor and explain in writing how filing, joining, or otherwise

214 participating as amicus curiae is necessary to support or protect state interests described in  
215 Subsection 67-5-1(27); and

216 (ii) obtain the governor's consent before filing, joining, or otherwise participating as  
217 amicus curiae;

218 [~~a~~] (c) keep the governor reasonably informed about the status of the matter and  
219 promptly comply with reasonable requests for information;

220 [~~b~~] (d) explain the matter to the extent reasonably necessary to enable the governor to  
221 make informed decisions regarding the representation; and

222 [~~c~~] (e) abide by the governor's decisions concerning the objectives of the  
223 representation and consult with the governor as to the means by which they are to be pursued.

224 (5) The governor may appear in any civil legal action involving the state and appoint  
225 legal counsel to advise or appear on behalf of the governor. The court shall allow the  
226 governor's appearance.