

HB0232S01 compared with HB0232

~~{deleted text}~~ shows text that was in HB0232 but was deleted in HB0232S01.

inserted text shows text that was not in HB0232 but was inserted into HB0232S01.

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Representative Brian S. King proposes the following substitute bill:

ATTORNEY GENERAL AUTHORITY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ places limitations on the circumstances when the attorney general may participate as amicus curiae (friend of the court) in ~~{a proceeding}~~ certain proceedings;
- ▶ requires the attorney general to consult with, and obtain the consent of, the governor before ~~{taking action, or }~~ participating as amicus curiae, in relation to certain civil ~~{action}~~ actions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

67-5-1. General duties.

The attorney general shall:

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

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

(3) after judgment on any cause [~~referred to~~] described 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

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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 the district and county attorneys' offices, including the authority to:

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

(b) review investigation results de novo and file criminal charges, if warranted, in any case involving a first degree felony, if:

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

(A) declines to file criminal charges; or

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

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

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

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

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

(c) to any county attorney or district attorney;

(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~~] described in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or

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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 connection with the state Medicaid program and any other medical assistance program

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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;

(21) (a) submit a written report to the committees described in Subsection (21)(b) that summarizes any lawsuit or decision in which a court or the Office of the Attorney General has determined that a state statute is unconstitutional or unenforceable since the attorney general's last report under this Subsection (21), including any:

(i) settlements reached;

(ii) consent decrees entered;

(iii) judgments issued;

(iv) preliminary injunctions issued;

(v) temporary restraining orders issued; or

(vi) formal or informal policies of the Office of the Attorney General to not enforce a law; and

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

(i) the Legislative Management Committee;

(ii) the Judiciary Interim Committee; and

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

(22) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with

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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;

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

(24) ensure that any training required under this chapter complies with Title 63G, Chapter 22, State Training and Certification Requirements;

(25) notify the legislative general counsel in writing within three business days after the day on which the attorney general is officially notified of a claim, regardless of whether the claim is filed in state or federal court, that challenges:

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

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

- (i) establish outreach to the tribes and affected counties and communities; and
 - (ii) foster better relations and a cooperative framework; ~~and~~
- (b) annually report to the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

(i) the status of the work of the special advisor described in Subsection (26)(a); and

(ii) whether the need remains for the ongoing appropriation to fund the special advisor described in Subsection (26)(a)~~[-]; and~~

(27) file, join, or otherwise participate as amicus curiae in a civil~~[-]~~ or criminal~~[-]~~ case in a state or ~~administrative matter~~ federal court located outside of Utah, only to the extent~~[-]~~ as~~[-]~~ necessary to support or protect state interests as reflected by:

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

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

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

67-5-17. Attorney-client relationship.

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

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

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

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

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

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

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

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

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

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

(a) ~~before initiating or pursuing the action:~~

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

~~(A) the Utah Constitution;~~

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~~(B) state statute;~~

~~(C) legislative resolution;~~

~~(D) administrative rule; or~~

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

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

~~(b) before } filing, joining, or otherwise participating as amicus curiae in a civil case in a state or federal court located outside of Utah:~~

~~(i) consult with the governor and explain in writing how filing, joining, or otherwise participating as amicus curiae is necessary to support or protect state interests described in Subsection 67-5-1(27); and~~

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

~~(a) (f**e**)b) keep the governor reasonably informed about the status of the matter and promptly comply with reasonable requests for information;~~

~~(b) (f**d**)c) explain the matter to the extent reasonably necessary to enable the governor to make informed decisions regarding the representation; and~~

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

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