

HB0127S03 compared with HB0127S02

~~text~~ shows text that was in HB0127S02 but was deleted in HB0127S03.

text shows text that was not in HB0127S02 but was inserted into HB0127S03.

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Representative **Doug Owens** proposes the following substitute bill:

BIAS INCIDENT REPORTING

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Doug Owens

Senate Sponsor: ~~_____~~ Curtis S. Bramble

LONG TITLE

General Description:

This bill creates the bias incident reporting system.

Highlighted Provisions:

This bill:

- ▶ directs the attorney general to create and operate the bias incident reporting system;
- and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

HB0127S03 compared with HB0127S02

AMENDS:

67-5-1, as last amended by Laws of Utah 2023, Chapter 330

ENACTS:

67-5-40, Utah Code Annotated 1953

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.

(1) The attorney general shall:

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

(b) 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;

(c) after judgment on any cause referred to in Subsection (1)(b), direct the issuance of process as necessary to execute the judgment;

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

(e) 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:

(i) 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;

(ii) 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

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

HB0127S03 compared with HB0127S02

(f) 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 described in Subsection (2);

(g) 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:

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

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

(iii) to any county attorney or district attorney;

(h) 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;

(i) 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;

(j) when the property of a judgment debtor in any judgment mentioned in Subsection (1)(i) 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;

(k) 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;

(l) 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;

(m) 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

HB0127S03 compared with HB0127S02

policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(n) 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;

(o) 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;

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

(q) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(r) 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 administered by the state, including violations of Title 26B, Chapter 3, Part 11, Utah False Claims Act;

(s) investigate and prosecute complaints of abuse, neglect, or exploitation of patients:

(i) in health care facilities that receive payments under the state Medicaid program;

(ii) in 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; and

(iii) who are receiving medical assistance under the Medicaid program as defined in Section 26B-3-101 in a noninstitutional or other setting;

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

(A) cost the state more than \$500,000; or

(B) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(ii) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report;

HB0127S03 compared with HB0127S02

(u) (i) submit a written report to the committees described in Subsection (1)(u)(ii) 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 (1)(u), including any:

- (A) settlements reached;
- (B) consent decrees entered;
- (C) judgments issued;
- (D) preliminary injunctions issued;
- (E) temporary restraining orders issued; or
- (F) formal or informal policies of the Office of the Attorney General to not enforce a

law; and

(ii) at least 30 days before the Legislature's May and November interim meetings, submit the report described in Subsection (1)(u)(i) to:

- (A) the Legislative Management Committee;
- (B) the Judiciary Interim Committee; and
- (C) the Law Enforcement and Criminal Justice Interim Committee;

(v) 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:

- (i) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and
- (ii) any other information or analysis requested by the rate committee;

(w) 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;

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

(y) 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:

- (i) the constitutionality of a state statute;
- (ii) the validity of legislation; or
- (iii) any action of the Legislature; [~~and~~]

HB0127S03 compared with HB0127S02

(z) (i) 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:

(A) establish outreach to the tribes and affected counties and communities; and

(B) foster better relations and a cooperative framework; and

(ii) annually report to the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

(A) the status of the work of the special advisor described in Subsection (1)(z)(i); and

(B) whether the need remains for the ongoing appropriation to fund the special advisor described in Subsection (1)(z)(i)~~[-]; and~~

(aa) operate the bias incident reporting system described in Section 67-5-40.

(2) (a) The attorney general may require a district attorney 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.

(b) The attorney general may 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 attorney or district attorney of the jurisdiction where the incident occurred and the county attorney or district attorney:

(A) declines to file criminal charges; or

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

(ii) after consultation with the county attorney 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 attorney or district attorney of the jurisdiction where the incident occurred.

(c) If the attorney general decides to conduct a review under Subsection (2)(b), the district attorney, county attorney, and law enforcement agency shall, within 14 days after the day on which the attorney general makes a request, provide the attorney general with:

(i) all information relating to the investigation, including all reports, witness lists, witness statements, and other documents created or collected in relation to the investigation;

HB0127S03 compared with HB0127S02

(ii) all recordings, photographs, and other physical or digital media created or collected in relation to the investigation;

(iii) access to all evidence gathered or collected in relation to the investigation; and

(iv) the identification of, and access to, all officers or other persons who have information relating to the investigation.

(d) If a district attorney, county attorney, or law enforcement agency fails to timely comply with Subsection (2)(c), the attorney general may seek a court order compelling compliance.

(e) If the attorney general seeks a court order under Subsection (2)(d), the court shall grant the order unless the district attorney, county attorney, or law enforcement agency shows good cause and a compelling interest for not complying with Subsection (2)(c).

Section 2. Section **67-5-40** is enacted to read:

67-5-40. Bias incident reporting system.

(1) As used in this section ~~f~~:

~~—~~ (a) ~~f~~; "~~Bias~~bias incident" means a hostile expression of animus by an individual toward another individual that:

~~(f)~~a does not rise to the level of a criminal offense; and

~~(f)~~b is motivated by a bias against a race, a religion, an ethnic or national origin group, sex, gender identity, a sexual orientation group, or a disability.

~~{~~ ~~—~~ (b) "~~National Incident-Based Reporting System~~" means the system operated by the Bureau of Justice established in 34 U.S.C. Sec. 10132.

~~}~~ (2) The attorney general shall:

(a) establish a system for the public to report a bias incident;

(b) create an online form for the reporting of a bias incident ~~{ that follows the format used by the National Incident-Based Reporting System }~~; and

(c) collect and publicly report on the attorney general's website anonymized data collected under this section.

(3) If the attorney general receives a report regarding a bias incident ~~under Subsection (2)~~ and determines that the incident rises to the level of a crime, the attorney general shall contact the law enforcement agency in the jurisdiction from where the report ~~{has been}~~was received and refer the incident for criminal investigation.

HB0127S03 compared with HB0127S02

(4) If the attorney general receives a name, address, phone number, or other identifying information of an individual alleged to have committed a bias incident as part of a report under Subsection (2), and the attorney general determines the bias incident does not rise to the level of a criminal offense, the attorney general shall immediately destroy or delete, in an unrecoverable manner, the name, address, phone number, or other identifying information received in the report.

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.