

**Representative Sheryl L. Allen** proposes to substitute the following bill:

**EDUCATOR LICENSING AND PROFESSIONAL  
PRACTICES ACT**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Sheryl L. Allen**

Richard M. Siddoway

AN ACT RELATING TO PUBLIC EDUCATION; REFORMATTING AND RESTRUCTURING  
STATUTORY PROVISIONS ON LICENSING OF EDUCATORS; PROVIDING DEFINITIONS;  
PROVIDING PROFESSIONAL DEVELOPMENT PROVISIONS; ESTABLISHING CRITERIA  
FOR USING SUBSTITUTE TEACHERS; PROVIDING FOR A HEARING PROCESS  
REGARDING COMPLAINTS AGAINST EDUCATORS; PROVIDING A REPEALER; AND  
PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**58-61-307**, as last amended by Chapter 10, Laws of Utah 1997

**63-30-2**, as last amended by Chapters 192 and 260, Laws of Utah 1994

ENACTS:

**53A-3-420**, Utah Code Annotated 1953

**53A-6-303**, Utah Code Annotated 1953

**53A-6-304**, Utah Code Annotated 1953

**53A-6-305**, Utah Code Annotated 1953

**53A-6-306**, Utah Code Annotated 1953

**53A-6-307**, Utah Code Annotated 1953

**53A-6-403**, Utah Code Annotated 1953

**53A-6-404**, Utah Code Annotated 1953

- 26 **53A-6-405**, Utah Code Annotated 1953
- 27 **53A-6-501**, Utah Code Annotated 1953
- 28 **53A-6-502**, Utah Code Annotated 1953
- 29 **53A-6-601**, Utah Code Annotated 1953
- 30 **53A-6-602**, Utah Code Annotated 1953
- 31 **53A-6-603**, Utah Code Annotated 1953
- 32 **53A-6-604**, Utah Code Annotated 1953

33 **REPEALS AND REENACTS:**

- 34 **53A-6-101**, as last amended by Chapter 78, Laws of Utah 1990
- 35 **53A-6-102**, as enacted by Chapter 2, Laws of Utah 1988
- 36 **53A-6-103**, as last amended by Chapters 263 and 280, Laws of Utah 1998
- 37 **53A-6-104**, as last amended by Chapter 246, Laws of Utah 1992
- 38 **53A-6-105**, as enacted by Chapter 2, Laws of Utah 1988
- 39 **53A-6-106**, as last amended by Chapter 160, Laws of Utah 1996
- 40 **53A-6-107**, as last amended by Chapter 263, Laws of Utah 1998
- 41 **53A-6-108**, as enacted by Chapter 220, Laws of Utah 1995
- 42 **53A-6-109**, as enacted by Chapter 95, Laws of Utah 1997
- 43 **53A-6-301**, as last amended by Chapter 113, Laws of Utah 1993
- 44 **53A-6-302**, as last amended by Chapter 260, Laws of Utah 1994
- 45 **53A-6-401**, as enacted by Chapter 308, Laws of Utah 1993
- 46 **53A-6-402**, as enacted by Chapter 308, Laws of Utah 1993
- 47 **53A-7-101**, as enacted by Chapter 2, Laws of Utah 1988
- 48 **53A-7-102**, as last amended by Chapter 247, Laws of Utah 1991

49 **REPEALS:**

- 50 **53A-7-103**, as last amended by Chapter 247, Laws of Utah 1991
- 51 **53A-7-104**, as last amended by Chapter 247, Laws of Utah 1991
- 52 **53A-7-105**, as last amended by Chapter 247, Laws of Utah 1991
- 53 **53A-7-106**, as last amended by Chapter 247, Laws of Utah 1991
- 54 **53A-7-107**, as last amended by Chapter 247, Laws of Utah 1991
- 55 **53A-7-108**, as enacted by Chapter 2, Laws of Utah 1988
- 56 **53A-7-109**, as last amended by Chapter 247, Laws of Utah 1991

57           53A-7-110, as last amended by Chapter 46, Laws of Utah 1998  
58           53A-7-111, as last amended by Chapter 247, Laws of Utah 1991  
59           53A-7-112, as last amended by Chapter 247, Laws of Utah 1991  
60           53A-7-113, as enacted by Chapter 2, Laws of Utah 1988  
61           53A-7-201, as last amended by Chapter 247, Laws of Utah 1991  
62           53A-7-202, as last amended by Chapter 247, Laws of Utah 1991  
63           53A-7-203, as last amended by Chapter 247, Laws of Utah 1991  
64           53A-7-204, as last amended by Chapter 247, Laws of Utah 1991

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

66           Section 1. Section 53A-3-420 is enacted to read:

67           **53A-3-420. Professional competence or performance -- Administrative hearing by**  
68 **local school board -- Action on complaint.**

69           (1) (a) No civil action by or on behalf of a student relating to the professional competence  
70 or performance of a licensed employee of a school district, or to the discipline of students by a  
71 licensed employee, application of in loco parentis, or a violation of ethical conduct by an employee  
72 of a school district, may be brought in a court until at least 60 days after the filing of a written  
73 complaint with the local board of education of the district, or until findings have been issued by  
74 the local board after a hearing on the complaint, whichever is sooner.

75           (b) (i) As used in Subsection (1)(a), "in loco parentis" means the power of professional  
76 school personnel to exercise the rights, duties, and responsibilities of a reasonable, responsible  
77 parent in dealing with students in school-related matters.

78           (i) A licensed employee who violates a school policy or rule, a state or federal law, or a  
79 constitutional provision in dealing with students in school related matters is not entitled to the  
80 presumption that the employee was acting in loco parentis.

81           (c) A parent of a student has standing to file a civil action against an employee who  
82 provides services to a school attended by the student.

83           (2) Within 15 days of receiving a complaint under Subsection (1), a local school board  
84 may elect to refer the complaint to the State Board of Education.

85           (3) If a complaint is referred to the board, no civil action may be brought in a court on  
86 matters relating to the complaint until the board has provided a hearing and issued its findings or  
87 until 90 days after the filing of the complaint with the local school board, whichever is sooner.

88 Section 2. Section **53A-6-101** is repealed and reenacted to read:

89 **CHAPTER 6. EDUCATOR LICENSING AND PROFESSIONAL PRACTICES ACT**

90 **Part 1. General Provisions**

91 **53A-6-101. Title.**

92 This chapter is known as the "Educator Licensing and Professional Practices Act."

93 Section 3. Section **53A-6-102** is repealed and reenacted to read:

94 **53A-6-102. Declaration of education as a profession.**

95 (1) The Legislature acknowledges that education is perhaps the most important function  
96 of state and local governments recognizing that the future success of our state and nation depend  
97 in large part upon the existence of a responsible and educated citizenry.

98 (2) In providing for the safe and effective performance of the function of educating Utah's  
99 children, the Legislature finds it to be of critical importance that education, including instruction,  
100 administrative, and supervisory services, be recognized as a profession, and that those to be  
101 licensed and to serve as educators:

102 (a) meet high standards both as to qualifications and fitness for service as educators before  
103 assuming their responsibilities in the schools;

104 (b) maintain those standards in the performance of their duties while holding licenses; and

105 (c) have access to a process for fair examination and review of allegations made against  
106 them and for the administration of appropriate sanctions against those found, in accordance with  
107 due process, to have failed to conduct themselves in a manner commensurate with their authority  
108 and responsibility to provide appropriate professional services to the children of the state.

109 Section 4. Section **53A-6-103** is repealed and reenacted to read:

110 **53A-6-103. Definitions.**

111 As used in this chapter:

112 (1) "Accredited institution" means an institution meeting the requirements of Section  
113 53A-6-107.

114 (2) "Alternative preparation program" means preparation for licensure in accordance with  
115 applicable law and rule through other than an approved preparation program.

116 (3) "Ancillary requirement" means a requirement established by law or rule in addition to  
117 completion of an approved preparation program or alternative education program or establishment  
118 of eligibility under the NASDTEC Interstate Contract, and may include any of the following:

- 119           (a) minimum grade point average;  
120           (b) standardized testing or assessment;  
121           (c) mentoring;  
122           (d) recency of professional preparation or experience;  
123           (e) graduation from an accredited institution; or  
124           (f) evidence relating to moral, ethical, physical, or mental fitness.  
125           (4) "Approved preparation program" means a program for preparation of educational  
126 personnel offered through an accredited institution in Utah or in a state which is a party to a  
127 contract with Utah under the NASDTEC Interstate Contract and which, at the time the program  
128 was completed by the applicant:  
129           (a) was approved by the governmental agency responsible for licensure of educators in the  
130 state in which the program was provided;  
131           (b) satisfied requirements for licensure in the state in which the program was provided;  
132           (c) required completion of a baccalaureate; and  
133           (d) included a supervised field experience.  
134           (5) "Board" means the Utah State Board of Education.  
135           (6) "Certificate" means a license issued by a governmental jurisdiction outside the state.  
136           (7) "Educator" means:  
137           (a) a person who holds a license;  
138           (b) a teacher, counselor, administrator, librarian, or other person required, under rules of  
139 the board, to hold a license; or  
140           (c) a person who is the subject of an allegation which has been received by the board or  
141 UPPAC and was, at the time noted in the allegation, a license holder or a person employed in a  
142 position requiring licensure.  
143           (8) "Endorsement" means a stipulation appended to a license setting forth the areas of  
144 practice to which the license applies.  
145           (9) "License" means an authorization issued by the board which permits the holder to serve  
146 in a professional capacity in the public schools. The four levels of licensure are:  
147           (a) "Letter of authorization," which is a temporary license issued to a person who has not  
148 completed requirements for a level 1, 2, or 3 license, such as a student teacher or a person hired  
149 to perform professional services on an emergency basis when fully qualified personnel are not

150 available;

151 (b) "Level 1 license," which is a license issued upon completion of an approved  
152 preparation program or an alternative preparation program, or pursuant to an agreement under the  
153 NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements  
154 established by law or rule;

155 (c) "Level 2 license," which is a license issued after satisfaction of all requirements for a  
156 Level 1 license as well as any additional requirements established by law or rule relating to  
157 professional preparation or experience; and

158 (d) "Level 3 license," which is a license issued to an educator who holds a current Utah  
159 Level 2 license and has also received, in the educator's field of practice, National Board  
160 certification or a doctorate from an accredited institution.

161 (10) "NASDTEC" means the National Association of State Directors of Teacher Education  
162 and Certification.

163 (11) "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter  
164 6, Part 2, Compact for Interstate Qualification of Educational Personnel, which is administered  
165 through NASDTEC.

166 (12) "National Board certification" means a current certificate issued by the National  
167 Board for Professional Teaching Standards.

168 (13) "Office" means the Utah State Office of Education.

169 (14) "Rule" means an administrative rule adopted by the board under Title 63, Chapter  
170 46a, Utah Administrative Rulemaking Act.

171 (15) "School" means a public or private entity which provides educational services to a  
172 minor child.

173 (16) "UPPAC" means the Utah Professional Practices Advisory Commission.

174 Section 5. Section **53A-6-104** is repealed and reenacted to read:

175 **53A-6-104. Board licensure.**

176 (1) (a) The board may issue licenses for educators.

177 (b) A person employed in a position that requires licensure by the board shall hold the  
178 appropriate license.

179 (2) (a) The board may by rule rank, endorse, or otherwise classify licenses and establish  
180 the criteria for obtaining and retaining licenses.

181           **(b) The board shall make rules requiring participation in professional development**  
182 **activities in order for educators to retain their licenses.**

183           **(3) Unless suspended or revoked by the board, or surrendered by the educator, a license**  
184 **is valid for the following period:**

185           **(a) a letter of authorization is valid for one year, or a shorter period as specified by the**  
186 **board, subject to renewal by the board for a total of not more than four years;**

187           **(b) a level 1 license is valid for three years, subject to renewal by the board for a total of**  
188 **not more than six years;**

189           **(c) a level 2 license is valid for five years, subject to renewal by the board; and**

190           **(d) a level 3 license is valid for seven years, subject to renewal by the board.**

191           Section 6. Section **53A-6-105** is repealed and reenacted to read:

192           **53A-6-105. Licensing fees -- Credit to subfund -- Payment of expenses.**

193           **(1) The board shall levy a fee for each new or reinstated license or endorsement in**  
194 **accordance with Section 63-38-3.2.**

195           **(2) Fee payments are credited to the Professional Practices Restricted Subfund in the**  
196 **Uniform School Fund.**

197           **(3) The board shall pay the expenses of issuing licenses and of UPPAC operations, and**  
198 **the costs of collecting license fees from the restricted subfund.**

199           **(4) The office shall submit an annual report to the Legislature's Public Education**  
200 **Appropriations Subcommittee informing the Legislature about the fund, fees assessed and**  
201 **collected, and expenditures from the fund.**

202           Section 7. Section **53A-6-106** is repealed and reenacted to read:

203           **53A-6-106. Qualifications of applicants for licenses -- Changes in qualifications.**

204           **(1) The board shall establish by rule the scholarship, training, and experience required of**  
205 **license applicants.**

206           **(2) (a) The board shall announce any increase in the requirements when made.**

207           **(b) An increase in requirements shall become effective not less than one year from the date**  
208 **of the announcement.**

209           **(3) The board may determine by examination or otherwise the qualifications of license**  
210 **applicants.**

211           Section 8. Section **53A-6-107** is repealed and reenacted to read:

212 **53A-6-107. Program approval.**

213 (1) The board shall establish by rule the standards which must be met by approved  
214 preparation programs and alternative preparation programs.

215 (2) Standards adopted by the board for approved preparation programs and alternative  
216 preparation programs shall meet or exceed generally recognized national standards for preparation  
217 of educators, such as those developed by the Interstate New Teacher Assessment and Support  
218 Consortium, the National Board for Professional Teaching Standards, and the National Council  
219 for the Accreditation of Teacher Education.

220 Section 9. Section **53A-6-108** is repealed and reenacted to read:

221 **53A-6-108. Prohibition on use of degrees or credit from unapproved institutions.**

222 (1) An individual may not use a postsecondary degree or credit awarded by a  
223 postsecondary institution or program to gain a license, employment, or any other benefit within  
224 the public school system unless the institution or program was, at the time the degree or credit was  
225 awarded:

226 (a) approved for the granting of the degree or credit by the board; or

227 (b) accredited by an accrediting organization recognized by the board.

228 (2) The board may grant an exemption from Subsection (1) to an individual who shows  
229 good cause for the granting of the exemption.

230 Section 10. Section **53A-6-109** is repealed and reenacted to read:

231 **53A-6-109. Substitute teachers.**

232 (1) A substitute teacher need not hold a license to teach, but school districts are  
233 encouraged to hire licensed personnel as substitutes when available.

234 (2) A person must submit to a background check under Section 53A-3-410 prior to  
235 employment as a substitute teacher.

236 (3) A teacher's position in the classroom may not be filled by unlicensed substitute teachers  
237 for more than a total of 20 days during any school year unless licensed personnel are not available.

238 (4) A person who is ineligible to hold a license for any reason other than professional  
239 preparation may not serve as a substitute teacher.

240 Section 11. Section **53A-6-301** is repealed and reenacted to read:

241 **Part 3. Utah Professional Practices Advisory Commission**

242 **53A-6-301. Utah Professional Practices Advisory Commission.**



243 The Utah Professional Practices Advisory Commission, UPPAC, is established to assist  
244 and advise the board in matters relating to the professional practices of educators.

245 Section 12. Section **53A-6-302** is repealed and reenacted to read:

246 **53A-6-302. UPPAC members -- Executive secretary.**

247 (1) UPPAC shall consist of a nonvoting executive secretary and 11 voting members, nine  
248 of whom shall be licensed educators in good standing, and two of whom shall be members  
249 nominated by the education organization within the state that has the largest membership of  
250 parents of students and teachers.

251 (2) Six of the voting members shall be persons whose primary responsibility is teaching.

252 (3) (a) The state superintendent of public instruction shall appoint an employee of the  
253 office to serve as executive secretary.

254 (b) Voting members are appointed by the superintendent as provided under Section  
255 53A-6-303.

256 (4) The office shall provide staff support for UPPAC activities.

257 Section 13. Section **53A-6-303** is enacted to read:

258 **53A-6-303. Nominations -- Appointment of commission members -- Reappointments.**

259 (1) (a) The board shall adopt rules establishing procedures for nominating and appointing  
260 individuals to voting membership on UPPAC.

261 (b) Nomination petitions must be filed with the state superintendent prior to June 16 of the  
262 year of appointment.

263 (c) A nominee for appointment as a member of UPPAC as an educator must have been  
264 employed in the representative class in the Utah public school system or a private school  
265 accredited by the board during the three years immediately preceding the date of appointment.

266 (2) The state superintendent of public instruction shall appoint the members of the  
267 commission.

268 (3) Appointments begin July 1 and are for terms of three years and until a successor is  
269 appointed.

270 (4) Terms of office are staggered so that approximately 1/3 of UPPAC members are  
271 appointed annually.

272 (5) A member may not serve more than two terms.

273 Section 14. Section **53A-6-304** is enacted to read:

274 **53A-6-304. Filling of vacancies.**

275 (1) A UPPAC vacancy occurs if a member resigns, fails to attend three or more meetings  
276 during a calendar year, or no longer meets the requirements for nomination and appointment.

277 (2) If a vacancy occurs, the state superintendent shall appoint a successor to fill the  
278 unexpired term.

279 (3) If the superintendent does not fill the vacancy within 60 days, the board shall make the  
280 appointment.

281 (4) Nominations to fill vacancies are submitted to the superintendent in accordance with  
282 procedures established under rules of the board.

283 Section 15. Section **53A-6-305** is enacted to read:

284 **53A-6-305. Meetings and expenses of UPPAC members.**

285 (1) UPPAC shall meet at least quarterly and at the call of the chair or of a majority of the  
286 members.

287 (2) Members of UPPAC serve without compensation but are allowed reimbursement for  
288 actual and necessary expenses under the rules of the Division of Finance.

289 (3) The board shall pay reimbursement to UPPAC members out of the Professional  
290 Practices Restricted Subfund in the Uniform School Fund.

291 Section 16. Section **53A-6-306** is enacted to read:

292 **53A-6-306. Purpose, powers, and duties of UPPAC.**

293 (1) UPPAC shall:

294 (a) adopt rules consistent with applicable law and board rules to carry out its  
295 responsibilities under this chapter;

296 (b) make recommendations to the board and professional organizations of educators:

297 (i) concerning standards of professional performance, competence, and ethical conduct for  
298 persons holding licenses issued by the board; and

299 (ii) for the improvement of the education profession;

300 (c) establish procedures for receiving and acting upon reports or allegations regarding  
301 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of  
302 standards of ethical conduct, performance, or professional competence;

303 (d) investigate any allegation of sexual abuse of a student or a minor by an educator; and

304 (e) establish the manner in which hearings are conducted and reported, and

305 recommendations are submitted to the board for its action.

306 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before  
307 UPPAC.

308 (b) Those investigations shall be independent of and separate from any criminal  
309 investigation.

310 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC  
311 authorization may:

312 (i) administer oaths and issue subpoenas which may be enforced through the state district  
313 courts;

314 (ii) receive any evidence related to an alleged offense, including sealed or expunged  
315 records released to the board under Section 77-18-15; and

316 (iii) where reasonable cause exists, initiate a criminal background check on a license  
317 holder.

318 (d) (i) A license holder shall receive written notice if a fingerprint check is required as a  
319 part of the background check.

320 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and Technical  
321 Services Division of the Department of Public Safety shall release the individual's full record, as  
322 shown on state, regional, and national records, to UPPAC.

323 (iii) UPPAC shall pay the cost of the background check except as provided under Section  
324 53A-6-401, and the moneys collected shall be credited to the Law Enforcement and Technical  
325 Services Division to offset its expenses.

326 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has committed  
327 a sexual offense against a minor child if the person has:

328 (a) after having had a reasonable opportunity to contest the allegation, been found pursuant  
329 to a criminal, civil, or administrative action to have committed a sexual offense against a minor  
330 child;

331 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual  
332 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance resulting  
333 in subsequent dismissal of such a charge, or failed to defend himself against such a charge when  
334 given reasonable opportunity to do so; or

335 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to

336 lapse in the face of a charge of having committed a sexual offense against a minor child.

337 (4) In resolving a complaint UPPAC may:

338 (a) dismiss the complaint;

339 (b) issue a warning or reprimand;

340 (c) issue an order of probation requiring an educator to comply with specific conditions  
341 in order to retain a license;

342 (d) enter into a written agreement requiring an educator to comply with certain conditions;

343 (e) recommend board action such as revocation or suspension of a license or restriction  
344 or prohibition of licensure; or

345 (f) take other appropriate action.

346 (5) UPPAC may not:

347 (a) participate as a party in any dispute relating to negotiations between a school district  
348 and its educators;

349 (b) take action against an educator without giving the individual an opportunity for a fair  
350 hearing to contest the allegations upon which the action would be based; or

351 (c) take action against an educator unless it finds that the action or the failure of the  
352 educator to act impairs the educator's ability to perform the functions of the educator's position.

353 Section 17. Section **53A-6-307** is enacted to read:

354 **53A-6-307. Powers of state board not abrogated.**

355 Nothing in this chapter limits or abrogates the power of the board to issue or revoke  
356 licenses, hold hearings, or otherwise carry out its functions.

357 Section 18. Section **53A-6-401** is repealed and reenacted to read:

358 **Part 4. Licensing and Background Checks**

359 **53A-6-401. Background checks.**

360 (1) (a) A license applicant shall submit to a background check as a condition for licensing.

361 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or  
362 revoked license.

363 (2) (a) The office shall establish a procedure for obtaining and evaluating relevant  
364 information concerning license applicants, including fingerprinting the applicant and submitting  
365 the prints to the Criminal Investigations and Technical Services Division of the Department of  
366 Public Safety for checking against applicable state, regional, and national criminal records files.

367 (b) The Criminal Investigations and Technical Services Division shall release to the office  
368 all information received in response to the office's request.

369 (3) An applicant shall have opportunity to respond to any information received by the  
370 office as a result of the background check.

371 (4) In preparing recommendations concerning licensing for submission to the board, the  
372 office shall consider only the following matters obtained through fingerprint checks to the extent  
373 that they are relevant to the license sought by the applicant:

374 (a) convictions;

375 (b) any matters involving an alleged sexual offense;

376 (c) any matters involving an alleged felony or class A misdemeanor drug offense;

377 (d) any matters involving an alleged offense against the person under Title 76, Chapter 5;

378 (e) any matters involving a felony;

379 (f) any matters involving a class A misdemeanor property offense alleged to have occurred  
380 within the previous three years; and

381 (g) any matters involving any other type of criminal offense, if more than one occurrence  
382 of the same type of offense is alleged to have taken place within the previous eight years.

383 (5) If a recommendation is made for denial of licensure because of information obtained  
384 through a background check, the person shall receive written notice of the reasons for the  
385 recommendation and have an opportunity to respond in accordance with procedures set forth under  
386 board rules.

387 (6) Information obtained under this section is confidential and may only be disclosed as  
388 provided in this part.

389 (7) The applicant shall pay the costs of conducting the background check.

390 (8) This section applies to matters occurring both before and after the effective date of this  
391 section.

392 Section 19. Section **53A-6-402** is repealed and reenacted to read:

393 **53A-6-402. Evaluation information on current or prospective school employees --**  
394 **Notice to employee -- Exemption from liability.**

395 (1) (a) The office's administrator of teacher licensing may provide the appropriate  
396 administrator of a public or private school or of an agency outside the state which is responsible  
397 for licensing or certification of educators with any recommendation or other information possessed

398 by the office which has significance in evaluating the employment or license of a current or  
399 prospective school employee, license holder, or applicant for licensing.

400 (b) Information supplied under Subsection (1)(a) may include the complete record of a  
401 hearing or the investigative report for matters which:

402 (i) the educator has had an opportunity to contest; and

403 (ii) did not proceed to a hearing.

404 (2) At the request of the office's administrator of teacher licensing, an administrator of a  
405 public school or school district shall, and an administrator of a private school may, provide any  
406 recommendation or other information possessed by the school or school district which has  
407 significance in evaluating the employment or licensure of a current or prospective school  
408 employee, license holder, or applicant for licensing.

409 (3) If a decision is made to deny licensure, to not hire a prospective employee, or to take  
410 action against a current employee or educator based upon information provided under this section,  
411 the affected individual shall receive notice of the information and be given an opportunity to  
412 respond to the information.

413 (4) A person who, in good faith, provides a recommendation or discloses or receives  
414 information under this section is exempt from civil and criminal liability relating to that  
415 recommendation, receipt, or disclosure.

416 (5) For purposes of this section, "employee" includes a volunteer.

417 Section 20. Section **53A-6-403** is enacted to read:

418 **53A-6-403. Office tie-in with the Criminal Investigations and Technical Services**  
419 **Division.**

420 (1) The office shall:

421 (a) be an online terminal agency with the Department of Public Safety's Criminal  
422 Investigations and Technical Services Division under Section 53-10-108; and

423 (b) provide relevant information concerning current or prospective employees or  
424 volunteers upon request to other school officials as provided in Section 53A-6-402.

425 (2) The cost of the online service shall be borne by the entity making the inquiry, using  
426 funds available to the entity, which may include funds authorized under Section 53A-6-401.

427 Section 21. Section **53A-6-404** is enacted to read:

428 **53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.**

429 (1) An applicant for a license, renewal of a license, or reinstatement of a license shall  
430 provide the administrator of teacher licensing with an affidavit, stating under oath the current  
431 status of any certificate, license, or other authorization required for a professional position in  
432 education, which the applicant holds or has held in any other jurisdiction.

433 (2) If the applicant's certificate, license, or authorization as an educator in any other  
434 jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is  
435 currently not valid for any other reason, then the office may not grant the requested license,  
436 renewal, or reinstatement until it has received confirmation from the administrator of professional  
437 certification in that jurisdiction that the applicant would be eligible for certification or licensure  
438 in that jurisdiction.

439 (3) The office may not withhold a license for the sole reason that the applicant would be  
440 ineligible for certification, licensure, or authorization in the jurisdiction referred to in Subsection  
441 (2) because of failure to meet current requirements in that jurisdiction relating to education, time  
442 in service, or residence.

443 Section 22. Section **53A-6-405** is enacted to read:

444 **53A-6-405. Denial of license.**

445 (1) The board may refuse to issue a license to any person for good cause shown, including  
446 any person who, after having had a reasonable opportunity to contest the allegation, has been found  
447 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing  
448 unfitness for duty, including behavior which would, had the person been an educator, have been  
449 considered to be immoral, unprofessional, or incompetent conduct, or a violation of standards of  
450 ethical conduct, performance, or professional competence.

451 (2) (a) Upon receipt of findings and recommendations from UPPAC, including the  
452 findings and recommendations, if any, of a hearing requested under Subsection (4), the board may  
453 issue a permanent ban on licensure of any person who has committed a sexual offense against a  
454 minor child.

455 (b) A permanent ban issued under this Subsection (2) is not subject to further review by  
456 UPPAC.

457 (3) A person ineligible for licensure under Subsection (2) may not be employed or  
458 permitted to volunteer services in any position in a public or private school where the person  
459 would be in close proximity to minor children or be permitted or required to interact with a minor

460 child.

461 (4) (a) A person denied licensure or employment under this section may, within 30 days  
462 of receipt of the denial and notice of rights of appeal, request a hearing before UPPAC to review  
463 and respond to all evidence upon which the denial was based.

464 (b) UPPAC shall prepare findings and recommendations for the board on any hearing held  
465 under Subsection (4)(a).

466 Section 23. Section **53A-6-501** is enacted to read:

467 **Part 5. Conduct of Educators**

468 **53A-6-501. Disciplinary action against educator.**

469 (1) (a) The board shall take appropriate action against any person who is, or at the time of  
470 an alleged offense was, the holder of a license, and:

471 (i) who, after having had a reasonable opportunity to contest the allegation, has been found  
472 pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing  
473 unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation  
474 of standards of ethical conduct, performance, or professional competence; or

475 (ii) who has been alleged to have exhibited such behavior or committed such a violation.

476 (b) Prior to taking action based upon an allegation or the decision of an administrative  
477 body other than UPPAC, the board shall direct UPPAC to review the allegations and any related  
478 administrative action and provide findings and recommendations to the board.

479 (c) No adverse recommendation may be made without giving the accused person an  
480 opportunity for a hearing.

481 (d) The board's action may include:

482 (i) revocation or suspension of a license;

483 (ii) restriction or prohibition of recertification;

484 (iii) a warning or reprimand;

485 (iv) required participation in and satisfactory completion of a rehabilitation or remediation  
486 program; or

487 (v) other action which the board finds to be appropriate after a review of the UPPAC  
488 findings and recommendations.

489 (e) The license holder is responsible for the costs of rehabilitation or remediation required  
490 under this section.



491 (2) Upon receipt of findings and recommendation from UPPAC, the board may  
492 permanently revoke the license of any person who has committed a sexual offense against a minor  
493 child or has exhibited other behavior which the board finds to be irremediable.

494 Section 24. Section **53A-6-502** is enacted to read:

495 **53A-6-502. Mandatory reporting of physical or sexual abuse of students.**

496 (1) For purposes of this section, "educator" means, in addition to a person included under  
497 Subsection 53A-6-103(7), a person, including a volunteer or temporary employee, who at the time  
498 of an alleged offense was performing a function in a private school for which a license would be  
499 required in a public school.

500 (2) In addition to any duty to report suspected cases of child abuse or neglect under Section  
501 62A-4a-403, an educator who has reasonable cause to believe that a student may have been  
502 physically or sexually abused by a school employee shall immediately report the belief and all  
503 other relevant information to the school principal, superintendent, or to the office.

504 (3) A school administrator who has received a report under Subsection (2) or who  
505 otherwise has reasonable cause to believe that a student may have been physically or sexually  
506 abused by an educator shall immediately report that information to the office.

507 (4) Failure to comply with Subsection (2) or (3) shall be considered unprofessional  
508 conduct.

509 (5) A person who makes a report under this section in good faith shall be immune from  
510 civil or criminal liability that might otherwise arise by reason of that report.

511 Section 25. Section **53A-6-601** is enacted to read:

## 512 **Part 6. Complaints and Hearings**

513 **53A-6-601. Definitions.**

514 As used in this part "hearing" means a proceeding held in accordance with generally  
515 accepted principles of due process and administrative law in which definite issues of fact or of law  
516 are tried before a hearing body, and in which proceeding evidence is presented and witnesses  
517 heard, and in which the party against whom the proceedings are held has a right to:

518 (1) appear with or without counsel to present evidence, confront and cross-examine  
519 witnesses, or subpoena witnesses; and

520 (2) obtain a decision based solely upon evidence presented to the hearing body in the  
521 presence of both parties or representatives of both parties, recognizing that presence is satisfied

522 if a party has been given a reasonable opportunity to attend, even if the party fails to do so.

523 Section 26. Section **53A-6-602** is enacted to read:

524 **53A-6-602. Designation of hearing officer or panel -- Review of findings.**

525 (1) UPPAC or a state or local school board charged with responsibility for conducting a  
526 hearing may conduct the hearing itself or appoint a hearing officer or panel to conduct the hearing  
527 and make recommendations concerning findings.

528 (2) UPPAC or the school board shall review the record of the hearing and the  
529 recommendations, and may obtain and review, in the presence of the parties or their  
530 representatives, additional relevant information, prior to issuing official findings.

531 (3) UPPAC shall provide a panel of its members to serve as fact finders in a hearing at  
532 the request of the educator who is the subject of the hearing.

533 Section 27. Section **53A-6-603** is enacted to read:

534 **53A-6-603. Administering of oaths -- Issuance of subpoenas.**

535 (1) UPPAC or a state or local school board charged with responsibility for conducting an  
536 investigation or a hearing under this chapter may administer oaths and issue subpoenas in  
537 connection with the investigation or hearing.

538 (2) If a hearing is before a hearing officer or panel, the hearing officer or panel may  
539 administer oaths, and the appointing body may issue subpoenas upon the request of the hearing  
540 officer or panel.

541 (3) Subpoenas shall be enforced upon the petition of the issuing body by the district court  
542 in the jurisdiction where the subpoena was issued, in the same manner as subpoenas issued by the  
543 court.

544 Section 28. Section **53A-6-604** is enacted to read:

545 **53A-6-604. Rules for conducting hearings -- Standard of proof.**

546 (1) The board, each local school board, and UPPAC shall each adopt rules for the conduct  
547 of hearings to ensure that requirements of due process are met.

548 (2) An accused party shall be provided not less than 15 days before a hearing with:

549 (a) notice of the hearing;

550 (b) the law, rule, or policy alleged to have been violated;

551 (c) sufficient information about the allegations and the evidence to be presented in support  
552 of the allegations to permit the accused party to prepare a meaningful defense; and

553 (d) a copy of the rules under which the hearing will be conducted.

554 (3) If an accused party fails to request a hearing within 30 days after written notice is sent  
555 to the party's address as shown on the records of the local board, for actions taken under the  
556 auspices of a local board, or on the records of the office, for actions taken under the auspices of  
557 UPPAC or the state board, then the accused party shall be considered to have waived the right to  
558 a hearing and the action may proceed without further delay.

559 (4) Hearing fact finders shall use the preponderance of evidence standard in deciding all  
560 questions unless a higher standard is required by law.

561 (5) (a) Unless otherwise provided in Title 53A, the decisions of state and local boards are  
562 final determinations under this section, appealable to the appropriate court for review.

563 (b) The court shall review the findings and decision of the board and uphold the boards  
564 decision unless it determines the board's decision was arbitrary and capricious.

565 Section 29. Section **53A-7-101** is repealed and reenacted to read:

566 **CHAPTER 7. DISPUTE RESOLUTION**

567 **53A-7-101. Mediation of contract negotiations.**

568 (1) The president of a professional local organization which represents a majority of the  
569 certificated employees of a school district or the chairman or president of a local school board may,  
570 after negotiating for 90 days, declare an impasse by written notification to the other party and to  
571 the State Board of Education.

572 (2) The party declaring the impasse may request the state superintendent of public  
573 instruction to appoint a mediator for the purpose of helping to resolve the impasse if the parties  
574 to the dispute have not been able to agree on a third party mediator.

575 (3) Within five working days after receipt of the written request, the state superintendent  
576 shall appoint a mediator who is mutually acceptable to the local school board and the professional  
577 organization representing a majority of the certificated employees.

578 (4) The mediator shall meet with the parties, either jointly or separately, and attempt to  
579 settle the impasse.

580 (5) The mediator may not, without the consent of both parties, make findings of fact or  
581 recommend terms for settlement.

582 (6) Both parties shall equally share the costs of mediation.

583 (7) Nothing in this section prevents the parties from adopting a written mediation

584 procedure other than that provided in this section.

585 (8) If the parties have a mediation procedure, they shall follow that procedure.

586 Section 30. Section **53A-7-102** is repealed and reenacted to read:

587 **53A-7-102. Appointment of hearing officer -- Hearing process.**

588 (1) If a mediator appointed under Section 53A-7-101 is unable to effect settlement of the  
589 controversy within 15 working days after his appointment, either party to the mediation may by  
590 written notification to the other party and to the state superintendent of public instruction request  
591 that their dispute be submitted to a hearing officer who shall make findings of fact and recommend  
592 terms of settlement.

593 (2) Within five working days after receipt of the request, the state superintendent of public  
594 instruction shall appoint a hearing officer who is mutually acceptable to the local school board and  
595 the professional organization representing a majority of the certificated employees.

596 (3) The hearing officer may not, without consent of both parties, be the same person who  
597 served as mediator.

598 (4) The hearing officer shall meet with the parties, either jointly or separately, may make  
599 inquiries and investigations, and may issue subpoenas for the production of persons or documents  
600 relevant to all issues in dispute.

601 (5) The State Board of Education and departments, divisions, authorities, bureaus,  
602 agencies, and officers of the state, local school boards, and the professional organization shall  
603 furnish the hearing officer, on request, all relevant records, documents, and information in their  
604 possession.

605 (6) If the final positions of the parties are not resolved before the hearing ends, the hearing  
606 officer shall prepare a written report containing the agreements of the parties with respect to all  
607 resolved negotiated contract issues and the positions that the hearing officer considers appropriate  
608 on all unresolved final positions of the parties.

609 (7) The hearing officer shall submit the report to the parties privately within ten working  
610 days after the conclusion of the hearing or within the date established for the submission of  
611 posthearing briefs, but not later than 20 working days after the hearing officer's appointment.

612 (8) Either the hearing officer, the professional organization, or the local board may make  
613 the report public if the dispute is not settled within ten working days after its receipt from the  
614 hearing officer.

615           (9) (a) The state superintendent of public instruction may determine the majority status of  
616 any professional organization which requests assistance under this section.

617           (b) The decision of the superintendent is final unless it is clearly inconsistent with the  
618 evidence.

619           Section 31. Section **58-61-307** is amended to read:

620           **58-61-307. Exemptions from licensure.**

621           In addition to the exemptions from licensure in Section 58-1-307, the following may  
622 engage in acts included within the definition of practice as a psychologist, subject to the stated  
623 circumstances and limitations, without being licensed under this chapter:

624           (1) the following when practicing within the scope of the license held:

625           (a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah  
626 Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; and

627           (b) a registered psychiatric mental health nurse specialist licensed under Chapter [68] 31b,  
628 Nurse Practice Act;

629           (2) a recognized member of the clergy while functioning in his ministerial capacity as long  
630 as he does not represent himself as or use the title of psychologist;

631           (3) an individual who is offering expert testimony in any proceeding before a court,  
632 administrative hearing, deposition upon the order of any court or other body having power to order  
633 the deposition, or proceedings before any master, referee, or alternative dispute resolution  
634 provider;

635           (4) an individual engaged in performing hypnosis who is not licensed under Title 58,  
636 Occupations and Professions, in a profession which includes hypnosis in its scope of practice, and  
637 who:

638           (a) (i) induces a hypnotic state in a client for the purpose of increasing motivation or  
639 altering lifestyles or habits, such as eating or smoking, through hypnosis;

640           (ii) consults with a client to determine current motivation and behavior patterns;

641           (iii) prepares the client to enter hypnotic states by explaining how hypnosis works and  
642 what the client will experience;

643           (iv) tests clients to determine degrees of suggestibility;

644           (v) applies hypnotic techniques based on interpretation of consultation results and analysis  
645 of client's motivation and behavior patterns; and

646 (vi) trains clients in self-hypnosis conditioning;

647 (b) may not:

648 (i) engage in the practice of mental health therapy;

649 (ii) represent himself using the title of a license classification in Subsection 58-60-102(5);

650 or

651 (iii) use hypnosis with or treat a medical, psychological, or dental condition defined in  
652 generally recognized diagnostic and statistical manuals of medical, psychological, or dental  
653 disorders;

654 (5) an individual's exemption from licensure under Subsection 58-1-307(1)(b) or (c) while  
655 completing any supervised clinical training requirement for licensure as a psychologist extends not  
656 more than one year from the date the minimum requirement for training is completed, unless the  
657 individual presents satisfactory evidence to the division and the Psychologist Licensing Board that  
658 the individual is making reasonable progress toward passing the qualifying examination or is  
659 otherwise on a course reasonably expected to lead to licensure as a psychologist, but any  
660 exemption under this subsection may not exceed two years past the date the minimum supervised  
661 clinical training requirement has been completed;

662 (6) an individual holding an earned doctoral degree in psychology who is employed by an  
663 accredited institution of higher education and who conducts research and teaches in that  
664 individual's professional field, but only if the individual does not engage in providing delivery or  
665 supervision of professional services regulated under this chapter to individuals or groups regardless  
666 of whether there is compensation for the services;

667 (7) any individual who was employed as a psychologist by a state, county, or municipal  
668 agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has  
669 maintained employment as a psychologist in the same state, county, or municipal agency or other  
670 political subdivision while engaged in the performance of his official duties for that agency or  
671 political subdivision; and

672 (8) an individual certified as a school psychologist under Section [~~53A-6-101~~] 53A-6-104:

673 (a) may represent himself as and use the terms "school psychologist" or "certified school  
674 psychologist"; and

675 (b) is restricted in his practice to employment within settings authorized by the State Board  
676 of Education; and

677 (9) an individual providing advice or counsel to another individual in a setting of their  
678 association as friends or relatives and in a nonprofessional and noncommercial relationship, if  
679 there is no compensation paid for the advice or counsel.

680 Section 32. Section **63-30-2** is amended to read:

681 **63-30-2. Definitions.**

682 As used in this chapter:

683 (1) "Claim" means any claim or cause of action for money or damages against a  
684 governmental entity or against an employee.

685 (2) (a) "Employee" includes a governmental entity's officers, employees, servants, trustees,  
686 commissioners, members of a governing body, members of a board, members of a commission,  
687 or members of an advisory body, officers and employees in accordance with Section 67-5b-104,  
688 student teachers certificated in accordance with Section [~~53A-6-101~~] 53A-6-104, educational  
689 aides, students engaged in providing services to members of the public in the course of an  
690 approved medical, nursing, or other professional health care clinical training program, volunteers,  
691 and tutors, but does not include an independent contractor.

692 (b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or not  
693 the individual holding that position receives compensation.

694 (3) "Governmental entity" means the state and its political subdivisions as defined in this  
695 chapter.

696 (4) (a) "Governmental function" means any act, failure to act, operation, function, or  
697 undertaking of a governmental entity whether or not the act, failure to act, operation, function, or  
698 undertaking is characterized as governmental, proprietary, a core governmental function, unique  
699 to government, undertaken in a dual capacity, essential to or not essential to a government or  
700 governmental function, or could be performed by private enterprise or private persons.

701 (b) A "governmental function" may be performed by any department, agency, employee,  
702 agent, or officer of a governmental entity.

703 (5) "Injury" means death, injury to a person, damage to or loss of property, or any other  
704 injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a  
705 private person or his agent.

706 (6) "Personal injury" means an injury of any kind other than property damage.

707 (7) "Political subdivision" means any county, city, town, school district, public transit

708 district, redevelopment agency, special improvement or taxing district, or other governmental  
709 subdivision or public corporation.

710 (8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real  
711 or personal property.

712 (9) "State" means the state of Utah, and includes any office, department, agency, authority,  
713 commission, board, institution, hospital, college, university, or other instrumentality of the state.

714 **Section 33. Repealer.**

715 This act repeals:

716 **Section 53A-7-103, Definitions.**

717 **Section 53A-7-104, Professional Practices Advisory Commission -- Members --**  
718 **Executive secretary.**

719 **Section 53A-7-105, Nominations -- Appointment of commission members --**  
720 **Reappointments.**

721 **Section 53A-7-106, Qualifications of commission members.**

722 **Section 53A-7-107, Filling of vacancies.**

723 **Section 53A-7-108, Meetings of commission.**

724 **Section 53A-7-109, Expenses of commission members.**

725 **Section 53A-7-110, Powers and duties.**

726 **Section 53A-7-111, Limitations on commission authority.**

727 **Section 53A-7-112, Fees -- Credit to subfund -- Appropriation for expenses.**

728 **Section 53A-7-113, Powers of state board not abrogated.**

729 **Section 53A-7-201, Definitions.**

730 **Section 53A-7-202, Professional competence or performance -- Administrative hearing**  
731 **by local school board -- Action on complaint.**

732 **Section 53A-7-203, Designation of hearing officer or panel -- Review of findings.**

733 **Section 53A-7-204, Administering of oaths -- Issuance of subpoenas.**

734 **Section 34. Effective date.**

735 This act takes effect on July 1, 1999.