

## Part 1 General Provisions

### **63G-4-101 Title.**

This chapter is known as the "Administrative Procedures Act."

Renumbered and Amended by Chapter 382, 2008 General Session

### **63G-4-102 Scope and applicability of chapter.**

- (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:
  - (a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
  - (b) judicial review of the action.
- (2) This chapter does not govern:
  - (a) the procedure for making agency rules, or judicial review of the procedure or rules;
  - (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;
  - (c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;
  - (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;
  - (e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;
  - (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;
  - (g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;
  - (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

- (i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;
  - (j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;
  - (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;
  - (l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;
  - (m) the initial determination of a person's eligibility for government or public assistance benefits;
  - (n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;
  - (o) a license for use of state recreational facilities;
  - (p) state agency action under Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;
  - (q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;
  - (r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;
  - (s) the issuance and enforcement of an initial order under Section 73-2-25;
  - (t)
    - (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
    - (ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1); and
  - (u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action.
- (3) This chapter does not affect a legal remedy otherwise available to:
- (a) compel an agency to take action; or
  - (b) challenge an agency's rule.
- (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:
- (a) requesting or ordering a conference with parties and interested persons to:
    - (i) encourage settlement;
    - (ii) clarify the issues;
    - (iii) simplify the evidence;
    - (iv) facilitate discovery; or
    - (v) expedite the proceeding; or
  - (b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

- (5)
  - (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.
  - (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.
- (6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.
- (7)
  - (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.
  - (b) The attorney general shall report the suspension to the Legislature at its next session.
- (8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.
- (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.
- (10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

Amended by Chapter 441, 2015 General Session

Amended by Chapter 333, 2012 General Session

### **63G-4-103 Definitions.**

- (1) As used in this chapter:
  - (a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63G-4-102.
  - (b) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.
  - (c) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.
  - (d) "Declaratory proceeding" means a proceeding authorized and governed by Section 63G-4-503.
  - (e) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.
  - (f) "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

- (g) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.
  - (h)
    - (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.
    - (ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.
    - (iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.
  - (i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.
  - (j) "Superior agency" means an agency required or authorized by law to review the orders of another agency.
- (2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-4-104 Bases for certain recommendations and decisions limited.**

- (1) Except as provided in Subsection (2), no agency may recommend or rule on the custody, placement, including foster placement, or other disposition alternative for a minor, or the termination of parental rights, based on the fact that a parent or guardian of the minor lawfully does one or more of the following:
- (a) legally possesses or uses a firearm or other weapon;
  - (b) espouses particular religious beliefs; or
  - (c) schools the minor or other minors outside the public education system or is otherwise sympathetic to schooling a minor outside the public education system.
- (2) Subsection (1) does not prohibit a recommendation or ruling based on the compatibility of a minor with a particular custody, placement, or other disposition alternative as determined by the presence of any of the factors in Subsections (1)(a) through (1)(c).

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-4-105 Transition procedures.**

- (1) The procedures for agency action, agency review, and judicial review contained in this chapter are applicable to all agency adjudicative proceedings commenced by or before an agency on or after January 1, 1988.
- (2) Statutes and rules governing agency action, agency review, and judicial review that are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by or before an agency on or before December 31, 1987, even if those proceedings are still pending before an agency or a court on January 1, 1988.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-4-106 Access to information on state-controlled websites.**

- (1) As used in this section and Sections 63G-4-107 and 63G-4-108:
  - (a) "Administrative disciplinary action" means, subject to the limitations described in Section 63G-4-102, state agency action against the interest of an individual that affects a legal right, duty, privilege, immunity, or other legal interest of an individual, including agency action to deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.
  - (b) "Record of administrative disciplinary action" means a notice, request, complaint, report, order, or other information related to an administrative disciplinary action.
  - (c) "State-controlled website" means a website:
    - (i) operated by:
      - (A) an agency; or
      - (B) a third party pursuant to a contract with an agency under which the agency controls the data available to the public; and
    - (ii) that includes personally identifiable information.
- (2) Unless otherwise required by federal law, if an agency maintains, on a state-controlled website available to the public, a record of administrative disciplinary action, the agency shall remove the record of administrative disciplinary action from public access on the state-controlled website by no later than 10 years from the date:
  - (a) a final order related to the administrative disciplinary action was issued; or
  - (b) the administrative disciplinary action was commenced, if no final order was issued related to the administrative disciplinary action.
- (3) Notwithstanding Subsection (2):
  - (a) a record of administrative disciplinary action issued in accordance with this chapter shall maintain its record classification pursuant to Subsection 63G-2-301(2)(c) or (3)(t); and
  - (b) a person may make a request for the record of administrative disciplinary action in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 312, 2016 General Session

**63G-4-107 Petition to remove agency action from public access.**

- (1) An individual may petition the agency that maintains, on a state-controlled website available to the public, a record of administrative disciplinary action, to remove the record of administrative disciplinary action from public access on the state-controlled website, if:
  - (a)
    - (i) five years have passed since:
      - (A) the date the final order was issued; or
      - (B) if no final order was issued, the date the administrative disciplinary action was commenced; or
    - (ii) the individual has obtained a criminal expungement order under Title 77, Chapter 40, Utah Expungement Act, for the individual's criminal records related to the same incident or conviction upon which the administrative disciplinary action was based;
  - (b) the individual has successfully completed all action required by the agency relating to the administrative disciplinary action within the time frame set forth in the final order, or if no time frame is specified in the final order, within the time frame set forth in Title 63G, Chapter 4, Administrative Procedures Act;
  - (c) from the time that the original administrative disciplinary action was filed, the individual has not violated the same statutory provisions or administrative rules related to those statutory provisions that resulted in the original administrative disciplinary action; and

- (d) the individual pays an application fee determined by the agency in accordance with Section 63J-1-504.
- (2) The individual petitioning the agency under Subsection (1) shall provide the agency with a written request containing the following information:
  - (a) the petitioner's full name, address, telephone number, and date of birth;
  - (b) the information the petitioner seeks to remove from public access; and
  - (c) an affidavit certifying that the petitioner is in compliance with the provisions of Subsection (1).
- (3) Within 30 days of receiving the documents and information described in Subsection (2):
  - (a) the agency shall review the petition and all documents submitted with the petition to determine whether the petitioner has met the requirements of Subsections (1) and (2); and
  - (b) if the agency determines that the petitioner has met the requirements of Subsections (1) and (2), the agency shall immediately remove the record of administrative disciplinary action from public access on the state-controlled website.
- (4) Notwithstanding the provisions of Subsection (3), an agency is not required to remove a recording, written minutes, or other electronic information from the Utah Public Notice Website, created under Section 63F-1-701, if the recording, written minutes, or other electronic information is required to be available to the public on the Utah Public Notice Website under the provisions of Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 312, 2016 General Session

**63G-4-108 Impact on duty to disclose an administrative action.**

The removal of a record of an administrative disciplinary action from a state-controlled website in accordance with Section 63G-4-106 or 63G-4-107 does not affect any separate legal duty or requirement that the subject of the administrative disciplinary action may have to disclose the action.

Enacted by Chapter 312, 2016 General Session