

Senator Howard A. Stephenson proposes the following substitute bill:

LIABILITY PROTECTION OF EDUCATORS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill requires school district and charter school employees to acknowledge in writing receipt of an existing disclosure.

Highlighted Provisions:

This bill:

- ▶ requires school district and charter school employees to acknowledge receipt of an existing liability protection disclosure; and
- ▶ modifies when school districts and charter schools may provide liability protection information to employees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-1a-512, as last amended by Chapters 251 and 330, Laws of Utah 2004

53A-3-411, as last amended by Chapters 284 and 315, Laws of Utah 2003

63A-4-204, as last amended by Chapter 266, Laws of Utah 2001

63A-4-204.5, as last amended by Chapter 266, Laws of Utah 2001



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

Section 1. Section **53A-1a-512** is amended to read:

53A-1a-512. Employees of charter schools.

(1) A charter school shall select its own employees.

(2) The school's governing body shall determine the level of compensation and all terms and conditions of employment, except as otherwise provided in Subsections (6) and (7) and under this part.

(3) The following statutes governing public employees and officers do not apply to charter schools:

(a) Chapter 8, Utah Orderly School Termination Procedures Act;

(b) Chapter 10, Educator Evaluation; and

(c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

(4) (a) To accommodate differentiated staffing and better meet student needs, a charter school, under rules adopted by the State Board of Education, shall employ teachers who:

(i) are licensed; or

(ii) on the basis of demonstrated competency, would qualify to teach under alternative certification or authorization programs.

(b) The school's governing body shall disclose the qualifications of its teachers to the parents of its students.

(5) (a) An employee of a school district may request a leave of absence in order to work in a charter school upon approval of the local school board.

(b) While on leave, the employee may retain seniority accrued in the school district and may continue to be covered by the benefit program of the district if the charter school and the locally elected school board mutually agree.

(6) Except as provided under Subsection (7), an employee of a charter school shall be a member of a retirement system under Title 49, Utah State Retirement and Insurance Act.

(7) (a) At the time of application for a charter school, whether sponsored by the state or a school district, a proposed charter school may make an election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement

57 Act.

58 (b) A charter school that was approved prior to July 1, 2004 may make an election of
59 nonparticipation prior to December 31, 2004.

60 (c) An election provided under this Subsection (7):

61 (i) is a one-time election made at the time specified under Subsection (7)(a) or (b);

62 (ii) shall be documented by a resolution adopted by the governing body of the charter
63 school;

64 (iii) is irrevocable; and

65 (iv) applies to the charter school as the employer and to all employees of the charter
66 school.

67 (d) The governing body of a charter school may offer employee benefit plans for its
68 employees:

69 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

70 or

71 (ii) under any other program.

72 (8) The governing body of a charter school shall ensure that, prior to the beginning of
73 each school year, each of its employees signs a document acknowledging that the employee:

74 (a) has received:

75 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates
76 in the Risk Management Fund; or

77 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if
78 the charter school does not participate in the Risk Management Fund; and

79 (b) understands the legal liability protection provided to the employee and what is not
80 covered, as explained in the disclosure.

81 Section 2. Section **53A-3-411** is amended to read:

82 **53A-3-411. Employment of school personnel -- Length of contract -- Termination**
83 **for cause -- Individual contract of employment -- Employee acknowledgment of liability**
84 **protection.**

85 (1) A local school board may enter into a written employment contract for a term not to
86 exceed five years.

87 (2) Nothing in the terms of the contract shall restrict the power of a local school board

88 to terminate the contract for cause at any time.

89 (3) (a) A local school board may not enter into a collective bargaining agreement that
90 prohibits or limits individual contracts of employment.

91 (b) Subsection (3)(a) does not apply to an agreement that was entered into before May
92 5, 2003.

93 (4) Each local school board shall:

94 (a) ensure that each employment contract complies with the requirements of Section
95 34-32-1.1; ~~and~~

96 (b) comply with the requirements of Section 34-32-1.1 in employing any personnel,
97 whether by employment contract or otherwise[-]; and

98 (c) ensure that at the time an employee enters into an employment contract, the
99 employee shall sign a separate document acknowledging that the employee:

100 (i) has received:

101 (A) the disclosure required under Subsection 63A-4-204(4)(d) if the school district
102 participates in the Risk Management Fund; or

103 (B) written disclosure similar to the disclosure required under Section 63A-4-204 if the
104 school district does not participate in the Risk Management Fund; and

105 (ii) understands the legal liability protection provided to the employee and what is not
106 covered, as explained in the disclosure.

107 Section 3. Section **63A-4-204** is amended to read:

108 **63A-4-204. School district participation in Risk Management Fund.**

109 (1) (a) For the purpose of this section, action by a public school district shall be taken
110 upon resolution by a majority of the members of the school district's board of education.

111 (b) (i) Upon approval by the state risk manager and the board of education of the
112 school district, a public school district may participate in the Risk Management Fund and may
113 permit a foundation established under Section 53A-4-205 to participate in the Risk
114 Management Fund.

115 (ii) Upon approval by the state risk manager and the State Board of Education, a state
116 public education foundation may participate in the Risk Management Fund.

117 (c) Subject to any cancellation or other applicable coverage provisions, either the state
118 risk manager or the public school district may terminate participation in the fund.

119 (2) The state risk manager shall contract for all insurance, legal, loss adjustment,
120 consulting, loss control, safety, and other related services necessary to support the insurance
121 program provided to a participating public school district, except that all supporting legal
122 services are subject to the prior approval of the state attorney general.

123 (3) (a) The state risk manager shall treat each participating public school district as a
124 state agency when participating in the Risk Management Fund.

125 (b) Each public school district participating in the fund shall comply with the
126 provisions of this part that affect state agencies.

127 (4) (a) By no later than March 31 of each year, the risk manager shall prepare, in
128 writing, the information required by Subsection (4)(b) regarding the coverage against legal
129 liability provided a school district employee of this state:

130 (i) by the Risk Management Fund;

131 (ii) under Title 63, Chapter [~~30, Utah~~] 30d, Governmental Immunity Act of Utah; and

132 (iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers
133 and Employees.

134 (b) (i) The information described in Subsection (4)(a) shall include:

135 (A) the eligibility requirements, if any, to receive the coverage;

136 (B) the basic nature of the coverage for a school district employee, including what is
137 not covered; and

138 (C) whether the coverage is primary or in excess of any other coverage the risk
139 manager knows is commonly available to a school district employee in this state.

140 (ii) The information described in Subsection (4)(a) may include:

141 (A) comparisons the risk manager considers beneficial to a school district employee
142 between:

143 (I) the coverage described in Subsection (4)(a); and

144 (II) other coverage the risk manager knows is commonly available to a school district
145 employee in this state; and

146 (B) any other information the risk manager considers appropriate.

147 (c) The risk manager shall provide the information prepared under this Subsection (4)
148 to each school district that participates in the Risk Management Fund.

149 (d) A school district that participates in the Risk Management Fund shall provide a

150 copy of the information described in Subsection (4)(c) to each school district employee within
151 the school district:

152 (i) at the time an employee enters into an employment contract and signs a separate
153 acknowledgment of legal liability protection in accordance with Section 53A-3-411; or

154 (ii) if the school district does not provide the information to the employee pursuant to
155 Subsection (4)(d)(i):

156 [(i)] (A) within 30 days of the day the school district employee is hired by the school
157 district; and

158 [(ii)] (B) by no later than April 15 of each calendar year.

159 Section 4. Section **63A-4-204.5** is amended to read:

160 **63A-4-204.5. Charter school participation in Risk Management Fund.**

161 (1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5,
162 The Utah Charter Schools Act, may participate in the Risk Management Fund upon the
163 approval of the state risk manager and the governing body of the charter school.

164 (2) (a) For purposes of administration, the state risk manager shall treat each charter
165 school participating in the fund as a state agency.

166 (b) Each charter school participating in the fund shall comply with the provisions of
167 this part that affect state agencies.

168 (3) (a) By no later than March 31 of each year, the risk manager shall prepare, in
169 writing, the information required by Subsection (3)(b) regarding the coverage against legal
170 liability provided a charter school employee of this state:

171 (i) by the Risk Management Fund;

172 (ii) under Title 63, Chapter [30] 30d, Utah Governmental Immunity Act of Utah; and

173 (iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers
174 and Employees.

175 (b) (i) The information described in Subsection (3)(a) shall include:

176 (A) the eligibility requirements, if any, to receive the coverage;

177 (B) the basic nature of the coverage for a charter school employee, including what is
178 not covered; and

179 (C) whether the coverage is primary or in excess of any other coverage the risk
180 manager knows is commonly available to a charter school employee in this state.

- 181 (ii) The information described in Subsection (3)(a) may include:
- 182 (A) comparisons the risk manager considers beneficial to a charter school employee
- 183 between:
- 184 (I) the coverage described in Subsection (3)(a); and
- 185 (II) other coverage the risk manager knows is commonly available to a charter school
- 186 employee in this state; and
- 187 (B) any other information the risk manager considers appropriate.
- 188 (c) The risk manager shall provide the information prepared under this Subsection (3)
- 189 to each charter school that participates in the Risk Management Fund.
- 190 (d) A charter school that participates in the Risk Management Fund shall provide a
- 191 copy of the information described in Subsection (3)(c) to each charter school employee within
- 192 the charter school:
- 193 (i) within 30 days of the day the charter school employee is hired by the charter school;
- 194 and
- 195 (ii) by no later than April 15 of each calendar year.

Fiscal Note
Bill Number SB0058s01

Liability Protection of Educators

17-Feb-05

9:33 AM

State Impact

Passage of this bill could require additional administrative responsibilities for school districts. Any associated costs can be handled within existing budgets.

Individual and Business Impact

None

Office of the Legislative Fiscal Analyst