

POLITICAL SUBDIVISION ETHICS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to a political subdivision officer or employee ethics violation.

Highlighted Provisions:

This bill:

- ▶ authorizes a municipality to establish a municipal ethics commission;
- ▶ enacts general provisions;
- ▶ defines terms;
- ▶ enacts provisions related to the Political Subdivisions Ethics Commission (Commission);
- ▶ enacts provisions related to general powers and procedures;
- ▶ enacts provisions related to a hearing on an ethics complaint;
- ▶ enacts provisions related to an ethics complaint;
- ▶ enacts provisions related to a review of an ethics complaint for compliance;
- ▶ enacts provisions related to the Commission's review of an ethics violation;
- ▶ authorizes a county to establish a county ethics commission;
- ▶ amends provisions related to a private record;
- ▶ enacts language related to filing a complaint for a violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
- ▶ makes technical corrections.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 **AMENDS:**

34 **10-3-1311**, as enacted by Laws of Utah 1981, Chapter 57

35 **17-16a-11**, as enacted by Laws of Utah 1983, Chapter 46

36 **63G-2-302**, as last amended by Laws of Utah 2011, Chapters 85, 327, and 413

37 **ENACTS:**

38 **11-49-101**, Utah Code Annotated 1953

39 **11-49-102**, Utah Code Annotated 1953

40 **11-49-201**, Utah Code Annotated 1953

41 **11-49-202**, Utah Code Annotated 1953

42 **11-49-301**, Utah Code Annotated 1953

43 **11-49-302**, Utah Code Annotated 1953

44 **11-49-401**, Utah Code Annotated 1953

45 **11-49-402**, Utah Code Annotated 1953

46 **11-49-403**, Utah Code Annotated 1953

47 **11-49-404**, Utah Code Annotated 1953

48 **11-49-405**, Utah Code Annotated 1953

49 **11-49-406**, Utah Code Annotated 1953

50 **11-49-407**, Utah Code Annotated 1953

51 **11-49-408**, Utah Code Annotated 1953

52 **11-49-501**, Utah Code Annotated 1953

53 **11-49-502**, Utah Code Annotated 1953

54 **11-49-601**, Utah Code Annotated 1953

55 **11-49-602**, Utah Code Annotated 1953

56 **11-49-603**, Utah Code Annotated 1953

57 **11-49-701**, Utah Code Annotated 1953

58 **11-49-702**, Utah Code Annotated 1953

- 59 **11-49-703**, Utah Code Annotated 1953
- 60 **11-49-704**, Utah Code Annotated 1953
- 61 **11-49-705**, Utah Code Annotated 1953
- 62 **11-49-706**, Utah Code Annotated 1953
- 63 **67-16-15**, Utah Code Annotated 1953

64

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

66 Section 1. Section **10-3-1311** is amended to read:

67 **10-3-1311. Municipal ethics commission -- Complaints charging violations.**

68 (1) A municipality may establish by ordinance an ethics commission to review a
69 complaint, except as provided in Subsection (3), against a person subject to this part for a
70 violation of a provision of this part.

71 (2) Except as provided in Subsection (3), a person filing a complaint for a violation of
72 this part may file the complaint:

73 (a) with the municipal ethics commission, if a municipality has established a municipal
74 ethics commission in accordance with Subsection (1); or

75 (b) with the Political Subdivisions Ethics Commission in accordance with Title 11,
76 Chapter 49, Political Subdivisions Ethics Commission.

77 ~~[(1)] (3) Any complaint against a person who is under the merit system, charging that~~
78 ~~person with a violation of this part, shall be filed and processed in accordance with the~~
79 ~~provisions of the merit system.~~

80 ~~[(2) If the person charged with the violation is not under any merit system, then the~~
81 ~~complaint shall be filed with the mayor or city manager. The mayor or city manager shall~~
82 ~~investigate the complaint and shall give the person an opportunity to be heard. A written report~~
83 ~~of the findings and the recommendation of the mayor or city manager shall be filed with the~~
84 ~~governing body. If the governing body finds that the person has violated this part, it may~~
85 ~~dismiss, suspend, or take such other appropriate action with respect to the person.]~~

86 Section 2. Section **11-49-101** is enacted to read:

87 **CHAPTER 49. POLITICAL SUBDIVISIONS ETHICS COMMISSION**

88 **Part 1. General Provisions**

89 **11-49-101. Title.**

90 This chapter is known as "Political Subdivisions Ethics Commission."

91 Section 3. Section **11-49-102** is enacted to read:

92 **11-49-102. Definitions.**

93 (1) "Commission" means the Political Subdivisions Ethics Commission established in
94 Section 11-49-201.

95 (2) "Complainant" means a person who files a complaint in accordance with Section
96 11-49-501.

97 (3) "Political subdivision" means a county, municipality, school district, community
98 development and renewal agency, local district, special service district, an entity created by an
99 interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local
100 building authority, or any other governmental subdivision or public corporation.

101 (4) (a) "Political subdivision employee" means a person who is:

102 (i) employed on a full or part-time basis by a political subdivision; and

103 (ii) subject to:

104 (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

105 (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

106 (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

107 (b) "Political subdivision employee" does not include:

108 (i) a person who is a political subdivision officer;

109 (ii) an employee of a state entity; or

110 (iii) a legislative employee as defined in Section 67-16-3.

111 (5) "Political subdivision governing body" means:

112 (a) for a county, the county legislative body as defined in Section 68-3-12.5;

113 (b) for a municipality, the council of the city or town;

114 (c) for a school district, the local board of education described in Section 53A-3-101;

115 (d) for a community development and renewal agency, the agency board described in
116 Section 17C-1-203;

117 (e) for a local district, the board of trustees described in Section 17B-1-301;

118 (f) for a special service district, the legislative body of the county or municipality that
119 creates the special service district;

120 (g) for an entity created by an interlocal agreement, the political subdivision governing

121 body of a public agency that created an interlocal agreement;

122 (h) for a local building authority, the governing body, as defined in Section 17D-2-102,
 123 that creates the local building authority; or

124 (i) for any other governmental subdivision or public corporation, the board or other
 125 body authorized to make executive and management decisions for the subdivision or public
 126 corporation.

127 (6) (a) "Political subdivision officer" means a person elected or appointed in a political
 128 subdivision who is subject to:

129 (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

130 (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

131 (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

132 (b) "Political subdivision officer" does not include:

133 (i) a person elected or appointed to a state entity;

134 (ii) the governor;

135 (iii) the lieutenant governor;

136 (iv) a member or member-elect of either house of the Legislature of Utah; or

137 (v) a member of Utah's congressional delegation.

138 (7) "Respondent" means a person who files a response in accordance with Section
 139 11-49-603.

140 Section 4. Section **11-49-201** is enacted to read:

141 **Part 2. Political Subdivisions Ethics Commission**

142 **11-49-201. Commission established -- Membership.**

143 (1) There is established a Political Subdivisions Ethics Commission.

144 (2) The commission is composed of five persons, each of whom is registered to vote in
 145 this state, appointed as follows:

146 (a) two members, who have served, but no longer serve, as judges of a court of record
 147 in this state, each of whom shall be nominated by the mutual consent of the president of the
 148 Senate and the speaker of the House, and appointed by a majority vote of the president of the
 149 Senate, speaker of the House, Senate minority leader, and House minority leader;

150 (b) one member, who has served, but no longer serves, as a judge of a court of record
 151 in this state, nominated by the mutual consent of the Senate minority leader and the House

152 minority leader, and appointed by a majority vote of the president of the Senate, speaker of the
153 House, Senate minority leader, and House minority leader;

154 (c) one member, who has served as a member of the Legislature in this state no more
155 recently than four years before the date of appointment, appointed by the mutual consent of the
156 president of the Senate and the speaker of the House; and

157 (d) one member, who has served as a member of the Legislature in this state no more
158 recently than four years before the date of appointment, appointed by the mutual consent of the
159 Senate minority leader and House minority leader.

160 (3) A member of the commission may not, during the member's term of office on the
161 commission, act or serve as:

162 (a) a political subdivision officer;

163 (b) a political subdivision employee;

164 (c) an agency head as defined in Section 67-16-3;

165 (d) a lobbyist as defined in Section 36-11-102; or

166 (e) a principal as defined in Section 36-11-102.

167 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each member of the commission
168 shall serve a four-year term.

169 (ii) When appointing the initial members upon formation of the commission, one
170 member nominated by the president of the Senate and the speaker of the House and one
171 member nominated by the Senate minority leader and House minority leader shall be appointed
172 to a two-year term so that approximately half of the commission is appointed every two years.

173 (b) (i) When a vacancy occurs in the commission's membership for any reason, a
174 replacement member shall be appointed for the unexpired term of the vacating member using
175 the procedures and requirements of Subsection (2).

176 (ii) For the purposes of this section, an appointment for an unexpired term of a
177 vacating member is not considered a full term.

178 (c) A member may not be appointed to serve for more than two full terms, whether
179 those terms are two or four years.

180 (d) A member of the commission may resign from the commission by giving one
181 month's written notice of the resignation to the president of the Senate, speaker of the House,
182 Senate minority leader, and House minority leader.

183 (e) The chair of the Legislative Management Committee shall remove a member from
184 the commission if the member:

185 (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;

186 (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral
187 turpitude; or

188 (iii) fails to meet the qualifications of office as provided in this section.

189 (f) If a commission member is accused of wrongdoing in a complaint, or if a
190 commission member determines that he or she has a conflict of interest in relation to a
191 complaint, a temporary commission member shall be appointed to serve in that member's place
192 for the purposes of reviewing that complaint using the procedures and requirements of
193 Subsection (2).

194 (5) (a) A member of the commission may not receive compensation or benefits for the
195 member's service, but may receive per diem and expenses incurred in the performance of the
196 member's official duties at the rates established by the Division of Finance under Sections
197 63A-3-106 and 63A-3-107.

198 (b) A member may decline to receive per diem and expenses for the member's service.

199 (6) (a) The commission members shall convene a meeting annually each January and
200 elect, by a majority vote, a commission chair from among the commission members.

201 (b) A person may not serve as chair for more than two consecutive years.

202 Section 5. Section **11-49-202** is enacted to read:

203 **11-49-202. Meetings -- Staff.**

204 (1) The commission shall meet for the purpose of reviewing an ethics complaint when:

205 (a) except otherwise expressly provided in this chapter, called to meet at the discretion
206 of the chair; or

207 (b) called to meet by a majority vote of the commission.

208 (2) A majority of the commission is a quorum.

209 (3) (a) The commission shall prepare, on an annual basis, a summary data report that
210 contains:

211 (i) a general description of the activities of the commission during the past year;

212 (ii) the number of ethics complaints filed with the commission;

213 (iii) the number of ethics complaints reviewed by the commission; and

- 214 (iv) an accounting of the commission's budget and expenditures.
- 215 (b) The summary data report shall be submitted to the Government Operations and
- 216 Political Subdivisions Interim Committee on an annual basis.
- 217 (c) The summary data report shall be a public record.
- 218 (4) (a) The Senate and the House of Representatives shall employ staff for the
- 219 commission at a level that is reasonable to assist the commission in performing its duties as
- 220 established in this chapter.

- 221 (b) The Legislative Management Committee shall:
- 222 (i) authorize each staff position for the commission; and
- 223 (ii) approve the employment of each staff member for the commission.
- 224 (c) Staff for the commission shall work only for the commission and may not perform
- 225 services for the Senate, House of Representatives, other legislative offices, or a political
- 226 subdivision.

227 Section 6. Section **11-49-301** is enacted to read:

228 **Part 3. General Powers and Procedures**

229 **11-49-301. Authority to review complaint -- Grounds for complaint -- Limitations**
230 **on filings.**

231 (1) Subject to the requirements of this chapter, the commission is authorized to review
232 an ethics complaint against a political subdivision officer or employee if the complaint alleges:

233 (a) if the applicable political subdivision is a municipality, a violation of Title 10,
234 Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:

- 235 (i) an appointed officer, as defined in Section 10-3-1303;
- 236 (ii) an elected officer, as defined in Section 10-3-1303; or
- 237 (iii) a municipal employee, as defined in Section 10-3-1303;

238 (b) if the applicable political subdivision is a county, a violation of Title 17, Chapter
239 16a, County Officers and Employees Disclosure Act by:

- 240 (i) an appointed officer, as defined in Section 17-16a-3;
- 241 (ii) an elected officer, as defined in Section 17-16a-3; or
- 242 (iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees
- 243 Disclosure Act;

244 (c) for a political subdivision officer or employee other than a municipal officer or

245 employee described in Subsection (1)(a), or a violation by a county officer or employee
246 described in Subsection (1)(b), a violation of Title 67, Chapter 16, Utah Public Officers' and
247 Employees' Ethics Act;

248 (d) a conviction of, or a plea of guilty to, a crime involving moral turpitude; or

249 (e) a plea of no contest or a plea in abeyance to a crime involving moral turpitude.

250 (2) (a) For an alleged violation under Subsection (1)(a), (b), or (c), the complaint shall
251 be filed in accordance with the time limit provisions, if any, of the applicable part or chapter.

252 (b) For an alleged violation under Subsection (1)(d) or (e), the complaint shall be filed
253 within two years of the date that the plea or conviction that forms the basis of the allegation
254 was entered.

255 (3) (a) A complaint may not contain an allegation if that allegation and the general
256 facts and circumstances supporting that allegation have been previously reviewed by a
257 municipal ethics commission established under Section 10-3-1311 or a county ethics
258 commission established under Section 17-16a-11, as applicable, or the commission unless:

259 (i) the allegation was previously reviewed and dismissed by either the commission or
260 as applicable, a municipal or county ethics commission;

261 (ii) the allegation is accompanied by material facts or circumstances supporting the
262 allegation that were not raised or pled to the commission or, as applicable, a municipal or
263 county ethics commission when the allegation was previously reviewed; and

264 (iii) in the case of an allegation previously reviewed by the commission, the allegation
265 and the general facts and circumstances supporting that allegation have only been reviewed by
266 the commission on one previous occasion.

267 (b) The commission may not review a complaint that is currently before a municipal
268 ethics commission established under Section 10-3-1311 or a county ethics commission
269 established under Section 17-16a-11.

270 (c) If an allegation in the complaint does not comply with the requirements of
271 Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:

272 (i) the chair when reviewing the complaint under Section 11-49-601; or

273 (ii) the commission, when reviewing the complaint under Section 11-49-701.

274 Section 7. Section **11-49-302** is enacted to read:

275 **11-49-302. General powers -- Jurisdiction.**

276 (1) The commission has jurisdiction only over an individual who is a political
277 subdivision officer or employee.

278 (2) The commission shall dismiss an ethics complaint if the respondent resigns or is
279 terminated from the political subdivision.

280 Section 8. Section **11-49-401** is enacted to read:

281 **Part 4. Hearing on Ethics Complaint**

282 **11-49-401. Hearing on ethics complaint -- General procedures.**

283 (1) In conducting a hearing on a complaint, the commission shall comply with the
284 following process in the order specified:

285 (a) introduction and instructions for procedure and process, at the discretion of the
286 chair;

287 (b) complainant's opening argument, to be presented by a complainant or complainant's
288 counsel;

289 (c) complainant's presentation of evidence and witnesses in support of allegations in
290 the complaint;

291 (d) consideration of motions to dismiss the complaint or motions for a directed verdict,
292 as applicable;

293 (e) respondent's opening argument, to be presented by the respondent or respondent's
294 counsel;

295 (f) respondent's presentation of evidence and witnesses refuting allegations in the
296 complaint;

297 (g) presentation of rebuttal evidence and witnesses by the complainant, at the
298 discretion of the chair;

299 (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion
300 of the chair;

301 (i) complainant's closing argument, to be presented by a complainant or complainant's
302 counsel;

303 (j) respondent's closing argument, to be presented by the respondent or respondent's
304 counsel;

305 (k) deliberations by the commission; and

306 (l) adoption of the commission's findings.

307 (2) The commission may, in extraordinary circumstances, vary the order contained in
308 Subsection (1) by majority vote and by providing notice to the parties.

309 (3) The chair may schedule the examination of a witness or evidence subpoenaed at the
310 request of the chair or the commission under Section 11-49-403 at the chair's discretion.

311 Section 9. Section **11-49-402** is enacted to read:

312 **11-49-402. Chair as presiding judge.**

313 (1) Except as expressly provided otherwise in this chapter, the chair of the commission
314 is vested with the power to direct the commission during meetings authorized by this chapter.

315 (2) Unless expressly prohibited from doing so under this chapter, the commission may
316 overrule a decision of the chair by using the following procedure:

317 (a) If a member objects to a decision of the chair, that member may appeal the decision
318 by stating:

319 (i) "I appeal the decision of the chair."; and

320 (ii) the basis for the objection.

321 (b) A motion described in Subsection (2)(a) is nondebatable.

322 (c) The chair shall direct a roll call vote to determine if the commission supports the
323 decision of the chair.

324 (d) A majority vote of the commission is necessary to overrule the decision of the
325 chair.

326 (3) The chair may set time limitations on any part of a meeting or hearing authorized
327 by this chapter.

328 Section 10. Section **11-49-403** is enacted to read:

329 **11-49-403. Subpoena powers.**

330 (1) For all proceedings authorized by this chapter, the commission may issue a
331 subpoena to:

332 (a) require the attendance of a witness;

333 (b) direct the production of evidence; or

334 (c) require both the attendance of a witness and the production of evidence.

335 (2) The commission shall issue a subpoena:

336 (a) in accordance with Section 11-49-405;

337 (b) at the direction of the commission chair, if the chair determines that the testimony

338 or evidence is relevant to the review of a complaint under Part 7, Commission Review of
339 Ethics Violations; or

340 (c) upon a vote of a majority of the commission members.

341 Section 11. Section **11-49-404** is enacted to read:

342 **11-49-404. Contempt of the commission.**

343 (1) (a) The following actions constitute contempt of the commission in relation to
344 actions and proceedings under this chapter:

345 (i) disobedience to a direction of the commission chair;

346 (ii) failure to answer a question during a hearing when directed to do so by:

347 (A) the commission chair, unless the direction is overridden by the commission in
348 accordance with Section 11-49-402; or

349 (B) a majority of the commission;

350 (iii) failure to comply with a subpoena or other order issued under authority of this
351 chapter;

352 (iv) violation of privacy provisions established by Section 11-49-502;

353 (v) violation of the communication provisions established by Section 11-49-407;

354 (vi) violation of a request to comply with a provision of this chapter by a chair or a
355 majority of the members of the commission; or

356 (vii) any other ground that is specified in statute or recognized by common law.

357 (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is
358 to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth
359 Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's
360 testimony relates.

361 (2) (a) The following persons may authorize an enforcement action against a person in
362 contempt of the commission under the provisions of this chapter:

363 (i) the commission chair, subject to the provisions of Section 11-49-402; or

364 (ii) members of the commission, by means of a majority vote.

365 (b) In initiating and pursuing an action against an individual for contempt of the
366 commission, the plaintiff shall comply with the procedures and requirements of Section
367 11-49-405.

368 Section 12. Section **11-49-405** is enacted to read:

369 11-49-405. Order to compel -- Enforcement.

370 (1) (a) When the subject of a subpoena issued in accordance with Section 11-49-403
371 disobeys or fails to comply with the subpoena, or if a person appears before the commission
372 pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully
373 interrogated, the commission may:

374 (i) file a motion for an order to compel obedience to the subpoena with the district
375 court within the jurisdiction of the applicable political subdivision;

376 (ii) file, with the district court, a motion for an order to show cause why the penalties
377 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
378 named in the subpoena for contempt of the commission; or

379 (iii) pursue other remedies against persons in contempt of the commission.

380 (b) (i) Upon receipt of a motion under this section, the court shall expedite the hearing
381 and decision on the motion.

382 (ii) A court may:

383 (A) order the person named in the subpoena to comply with the subpoena; and

384 (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
385 the person named in the subpoena for contempt of the commission.

386 (2) (a) If a commission subpoena requires the production of accounts, books, papers,
387 documents, or other tangible things, the person or entity to whom the subpoena is directed may
388 petition a district court to quash or modify the subpoena at or before the time specified in the
389 subpoena for compliance.

390 (b) The commission may respond to a motion to quash or modify the subpoena by
391 pursuing any remedy authorized by Subsection (1).

392 (c) If the court finds that a commission subpoena requiring the production of accounts,
393 books, papers, documents, or other tangible things is unreasonable or oppressive, the court may
394 quash or modify the subpoena.

395 (3) Nothing in this section prevents the commission from seeking an extraordinary writ
396 to remedy contempt of the commission.

397 (4) Any party aggrieved by a decision of a court under this section may appeal that
398 action directly to the Utah Supreme Court.

399 Section 13. Section **11-49-406** is enacted to read:

400 11-49-406. Testimony and examination of witnesses -- Oath -- Procedure --
401 **Contempt.**

402 (1) (a) The chair shall ensure that each witness listed in the complaint and response is
403 subpoenaed for appearance at the hearing unless:

404 (i) the witness is unable to be properly identified or located; or

405 (ii) service is otherwise determined to be impracticable.

406 (b) The chair shall determine the scheduling and order of witnesses and presentation of
407 evidence.

408 (c) The commission may, by majority vote:

409 (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);

410 (ii) modify the chair's determination on the scheduling and order of witnesses under
411 Subsection (1)(b);

412 (iii) decline to hear or call a witness that has been requested by the complainant or
413 respondent;

414 (iv) decline to review or consider evidence submitted in relation to an ethics complaint;
415 or

416 (v) request and subpoena witnesses or evidence according to the procedures of Section
417 11-49-403.

418 (2) (a) Each witness shall testify under oath.

419 (b) The chair or the chair's designee shall administer the oath to each witness.

420 (3) After the oath has been administered to the witness, the chair shall direct testimony
421 as follows:

422 (a) allow the party that has called the witness, or that party's counsel, to question the
423 witness;

424 (b) allow the opposing party, or that party's counsel, to cross-examine the witness;

425 (c) allow additional questioning by a party or a party's counsel as appropriate;

426 (d) give commission members the opportunity to question the witness; and

427 (e) as appropriate, allow further examination of the witness by the commission, or the
428 parties or their counsel.

429 (4) (a) If the witness, a party, or a party's counsel objects to a question, the chair shall:

430 (i) direct the witness to answer; or

431 (ii) rule that the witness is not required to answer the question.

432 (b) If the witness declines to answer a question after the chair or a majority of the
433 commission determines that the witness is required to answer the question, the witness may be
434 held in contempt as provided in Section 11-49-404.

435 (5) (a) The chair or a majority of the members of the commission may direct a witness
436 to furnish any relevant evidence for consideration if the witness has brought the material
437 voluntarily or has been required to bring it by subpoena.

438 (b) If the witness declines to provide evidence in response to a subpoena, the witness
439 may be held in contempt as provided in Section 11-49-404.

440 Section 14. Section **11-49-407** is enacted to read:

441 **11-49-407. Communications of commission members.**

442 (1) As used in this section, "third party" means a person who is not a member of the
443 commission or staff to the commission.

444 (2) While a complaint is under review by the commission, a member of that
445 commission may not initiate or consider any communications concerning the complaint with a
446 third party unless:

447 (a) the communication is expressly permitted under the procedures established by this
448 chapter; or

449 (b) the communication is made by the third party, in writing, simultaneously to:

450 (i) all members of the commission; and

451 (ii) a staff member of the commission.

452 (3) While the commission is reviewing a complaint under this chapter, a commission
453 member may communicate outside of the meetings, hearing, or deliberations with another
454 member of, or staff to, the commission, only if the member's communication does not
455 materially compromise the member's responsibility to independently review and make
456 decisions in relation to the complaint.

457 Section 15. Section **11-49-408** is enacted to read:

458 **11-49-408. Attorney fees and costs.**

459 (1) A person filing a complaint under this chapter:

460 (a) may, but is not required to, retain legal representation during the complaint review
461 process; and

462 (b) is responsible for payment of complainant's attorney fees and costs incurred.

463 (2) (a) A respondent against whom a complaint is filed under this chapter:

464 (i) may, but is not required to, retain legal representation during the complaint review
465 process; and

466 (ii) is responsible for the respondent's own attorney fees and costs involved, except as
467 provided in Subsection (2)(b).

468 (b) A political subdivision for which the respondent is a political subdivision officer or
469 employee shall pay the reasonable attorney fees and costs incurred by the respondent against
470 whom a complaint is filed under this chapter if the commission determines that none of the
471 allegations in the complaint have been proved.

472 (3) (a) An attorney participating in a hearing before the commission shall comply with:

473 (i) the Rules of Professional Conduct established by the Utah Supreme Court;

474 (ii) the procedures and requirements of this chapter; and

475 (iii) the directions of the chair and commission.

476 (b) A violation of Subsection (3)(a) may constitute:

477 (i) contempt of the commission under Section 11-49-404; or

478 (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah
479 State Bar.

480 Section 16. Section **11-49-501** is enacted to read:

481 **Part 5. Complaint of Ethics Violation**

482 **11-49-501. Ethics complaints -- Who may file -- Form.**

483 (1) (a) Notwithstanding any other provision, the following may file a complaint,
484 subject to the requirements of Subsections (1)(b) and (c) and Section 11-49-301, against a
485 political subdivision officer or employee:

486 (i) two or more registered voters who reside within the boundaries of a political
487 subdivision;

488 (ii) two or more registered voters who pay a fee or tax to a political subdivision; or

489 (iii) one or more registered voters who reside within the boundaries of a political
490 subdivision and one or more registered voters who pay a fee or tax to the political subdivision.

491 (b) A person described in Subsection (1)(a) may not file a complaint unless at least one
492 person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and

493 circumstances supporting the alleged violation.

494 (c) A complainant may file a complaint only against an individual who, on the date that
495 the complaint is filed, is serving as a political subdivision officer or is a political subdivision
496 employee.

497 (2) (a) A complainant shall file a complaint with the chair of the commission.

498 (b) An individual may not file a complaint during the 60 calendar days immediately
499 preceding:

500 (i) a regular primary election, if the accused political subdivision officer is a candidate
501 in the primary election; or

502 (ii) a regular general election in which an accused political subdivision officer is a
503 candidate, unless the accused political subdivision officer is unopposed in the election.

504 (3) A complainant shall ensure that each complaint filed under this section is in writing
505 and contains the following information:

506 (a) the name and position or chapter of the political subdivision officer or employee
507 alleged to be in violation;

508 (b) the name, address, and telephone number of each individual who is filing the
509 complaint;

510 (c) a description of each alleged violation, including for each alleged violation:

511 (i) a reference to:

512 (A) the section of the code alleged to have been violated; or

513 (B) if the political subdivision officer or employee has been charged with a criminal
514 violation, the criminal provision violated and the docket number of the case;

515 (ii) the name of the complainant who has actual knowledge of the facts and
516 circumstances supporting each allegation; and

517 (iii) the facts and circumstances supporting each allegation, which shall be provided
518 by:

519 (A) copies of official records or documentary evidence; or

520 (B) one or more affidavits that include the information required in Subsection (4);

521 (d) a list of the witnesses that a complainant wishes to have called, including for each
522 witness:

523 (i) the name, address, and, if available, one or more telephone numbers of the witness;

- 524 (ii) a brief summary of the testimony to be provided by the witness; and
525 (iii) a specific description of any documents or evidence a complainant desires the
526 witness to produce;
- 527 (e) a statement that each complainant:
528 (i) has reviewed the allegations contained in the complaint and the sworn statements
529 and documents attached to the complaint;
530 (ii) believes that the complaint is submitted in good faith and not for any improper
531 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
532 respondent's reputation, or causing unnecessary expenditure of public funds; and
533 (iii) believes the allegations contained in the complaint to be true and accurate; and
534 (f) the signature of each complainant.
- 535 (4) An affidavit described in Subsection (3)(c)(iii)(B) shall include:
536 (a) the name, address, and telephone number of the signer;
537 (b) a statement that the signer has actual knowledge of the facts and circumstances
538 alleged in the affidavit;
539 (c) the facts and circumstances testified by the signer;
540 (d) a statement that the affidavit is believed to be true and correct and that false
541 statements are subject to penalties of perjury; and
542 (e) the signature of the signer.
- 543 Section 17. Section **11-49-502** is enacted to read:
544 **11-49-502. Privacy of ethics complaint -- Contempt -- Enforcement of finding of**
545 **contempt -- Dismissal.**
- 546 (1) (a) Except as provided in Subsection (1)(b) or (c), a person, including a
547 complainant, the respondent, a commission member, or staff to the commission, may not
548 disclose the existence of a complaint, a response, nor any information concerning any alleged
549 violation that is the subject of a complaint.
- 550 (b) The restrictions in Subsection (1)(a) do not apply to the respondent's voluntary
551 disclosure of a finding by the commission that no allegations in a complaint were proved, after
552 that finding is issued by the commission under the procedures and requirements of Section
553 11-49-704.
- 554 (c) Nothing in this section shall prevent a person from disclosing facts or allegations

555 about potential criminal violations to a law enforcement authority.

556 (2) A person who violates the provisions of Subsection (1)(a) is in contempt of the
557 commission and proceedings may be initiated to enforce the finding of contempt using the
558 procedures provided in Sections 11-49-404 and 11-49-405.

559 (3) If the existence of an ethics complaint is publicly disclosed during the period that
560 the commission is reviewing the complaint, the complaint shall be summarily dismissed
561 without prejudice.

562 Section 18. Section **11-49-601** is enacted to read:

563 **Part 6. Review of Complaint for Compliance**

564 **11-49-601. Review of ethics complaint for compliance with form requirements --**
565 **Independent requirements for complaint-- Notice.**

566 (1) Within five business days after receipt of a complaint, the staff of the commission,
567 in consultation with the chair of the commission, shall examine the complaint to determine if it
568 is in compliance with Section 11-49-301 or 11-49-501.

569 (2) (a) If the chair determines that the complaint does not comply with Section
570 11-49-301 or 11-49-501, the chair shall:

571 (i) return the complaint to the first complainant named on the complaint with:

572 (A) a statement detailing the reason for the non-compliance; and

573 (B) a copy of the applicable provisions in this chapter; and

574 (ii) notify the applicable political subdivision governing body that:

575 (A) a complaint was filed against an unidentified political subdivision officer or
576 employee but was returned for non-compliance with this chapter; and

577 (B) the fact that a complaint was filed and returned shall be kept confidential until the
578 commission submits its annual summary data report as required by Section 11-49-202.

579 (b) If a complaint is returned for non-compliance with the requirements of this chapter,
580 a complainant may file another complaint if the new complaint independently meets the
581 requirements of Sections 11-49-301 and 11-49-501, including any requirements for timely
582 filing.

583 (3) If the chair determines that the complaint complies with the requirements of this
584 section, the chair shall:

585 (a) accept the complaint;

586 (b) notify each member of the commission that the complaint has been filed and
587 accepted;

588 (c) notify the applicable political subdivision that:

589 (i) a complaint has been filed against an unidentified political subdivision officer or
590 employee;

591 (ii) the identity of the political subdivision officer or employee and the allegations
592 raised in the complaint are confidential pending the commission's review of the complaint; and

593 (iii) the fact that a complaint was filed shall be kept confidential until the commission
594 publicly discloses the existence of the complaint via:

595 (A) a recommendation that an allegation in the complaint be considered by the political
596 subdivision governing body in accordance with Section 11-49-704; or

597 (B) submission of the commission's annual summary data report as required in Section
598 11-49-202; and

599 (d) promptly forward the complaint to the political subdivision officer or employee
600 who is the subject of the ethics complaint via personal delivery or a delivery method that
601 provides verification of receipt, together with a copy of this chapter and notice of the officer's
602 or employee's deadline for filing a response to the complaint.

603 Section 19. Section **11-49-602** is enacted to read:

604 **11-49-602. Meeting of the Commission to review a complaint -- Procedures.**

605 By no later than 10 calendar days after the day on which a complaint is accepted under
606 Section 11-49-601, the commission chair shall:

607 (1) schedule a commission meeting on a date no later than 60 calendar days after the
608 date on which the commission accepts the complaint;

609 (2) place the complaint on the agenda for consideration at the meeting described in
610 Subsection (1);

611 (3) provide notice of the date, time, and location of the meeting to:

612 (a) the members of the commission;

613 (b) the first complainant named in the complaint; and

614 (c) the respondent; and

615 (4) provide a copy of the complaint to each member of the commission.

616 Section 20. Section **11-49-603** is enacted to read:

617 **11-49-603. Response to ethics complaint -- Filing -- Form.**

618 (1) The political subdivision officer or employee who is the subject of the complaint
619 may file a response to the complaint no later than 30 days after the day on which the officer or
620 employee receives delivery of the complaint.

621 (2) The respondent shall file the response with the commission and ensure that the
622 response is in writing and contains the following information:

623 (a) the name, address, and telephone number of the respondent;

624 (b) for each alleged violation in the complaint:

625 (i) each affirmative defense asserted in response to the allegation, including a general
626 description of each affirmative defense and the facts and circumstances supporting the defense
627 to be provided by one or more affidavits, each of which shall comply with Subsection (4);

628 (ii) the facts and circumstances refuting the allegation, which shall be provided by:

629 (A) copies of official records or documentary evidence; or

630 (B) one or more affidavits, each of which shall comply with Subsection (4);

631 (c) a list of the witnesses that the respondent wishes to have called, including for each
632 witness:

633 (i) the name, address, and, if available, telephone number of the witness;

634 (ii) a brief summary of the testimony to be provided by the witness; and

635 (iii) a specific description of any documents or evidence the respondent desires the
636 witness to produce;

637 (d) a statement that the respondent:

638 (i) has reviewed the allegations contained in the complaint and the sworn statements
639 and documents attached to the response; and

640 (ii) believes the contents of the response to be true and accurate; and

641 (e) the signature of the respondent.

642 (3) Promptly after receiving the response, the commission shall provide copies of the
643 response to:

644 (a) each member of the commission; and

645 (b) the first named complainant on the complaint.

646 (4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the
647 following information:

- 648 (a) the name, address, and telephone number of the signer;
- 649 (b) a statement that the signer has actual knowledge of the facts and circumstances
- 650 alleged in the affidavit;
- 651 (c) the facts and circumstances testified to by the signer;
- 652 (d) a statement that the affidavit is believed to be true and correct and that false
- 653 statements are subject to penalties of perjury; and
- 654 (e) the signature of the signer.

655 Section 21. Section **11-49-701** is enacted to read:

656 **Part 7. Commission Review of Ethics Violation**

657 **11-49-701. Commission review of ethics violation.**

658 (1) The scope of a review by the commission is limited to the alleged violations stated

659 in a complaint.

660 (2) (a) Before holding the meeting for review of the complaint, the commission chair

661 may schedule a separate meeting of the commission for the purposes of:

662 (i) hearing motions or arguments from the parties, including hearing motions or

663 arguments relating to dismissal of a complaint, admission of evidence, or procedures;

664 (ii) holding a vote of the commission, with or without the attendance of the parties, on

665 procedural or commission business matters relating to a complaint; or

666 (iii) reviewing a complaint, with or without the attendance of the parties, to determine

667 if the complaint should be dismissed in whole or in part, by means of a majority vote of the

668 commission, because the complaint pleads facts or circumstances against a political

669 subdivision officer or employee that have already been reviewed by, as provided in Section

670 11-49-301, the commission, a municipal ethics commission established in accordance with

671 Section 10-3-1311, or a county ethics commission established in accordance with Section

672 17-16a-11.

673 (b) Notwithstanding Section 11-49-602, the commission may, by a majority vote,

674 change the date of the meeting for review of the complaint in order to accommodate:

675 (i) a meeting authorized under Subsection (2)(a); or

676 (ii) necessary scheduling requirements.

677 (3) (a) The commission shall comply with the Utah Rules of Evidence except where

678 the commission determines, by majority vote, that a rule is not compatible with the

679 requirements of this chapter.

680 (b) The chair shall make rulings on admissibility of evidence consistent with the
681 provisions of Section 11-49-402.

682 (4) (a) A meeting or hearing authorized in this part is closed to the public.

683 (b) The following individuals may be present during the presentation of testimony and
684 evidence to the commission:

685 (i) the complainant, except that no more than three complainants may be present at one
686 time;

687 (ii) the complainant's counsel, if applicable;

688 (iii) the respondent;

689 (iv) the respondent's counsel, if applicable;

690 (v) members of the commission;

691 (vi) staff to the commission;

692 (vii) a witness, while testifying before the commission; and

693 (viii) necessary security personnel.

694 (c) The complainant, respondent, and their respective counsel may be excluded from a
695 portion of the meeting when the commission discusses administrative, procedural, legal, or
696 evidentiary issues by:

697 (i) the order of the chair, subject to override as provided in Section 11-49-402; or

698 (ii) a majority vote of the commission.

699 (d) When the commission deliberates at the conclusion of presentation of testimony
700 and evidence, the commission shall ensure that those deliberations are closed to all persons
701 except for the members of the commission and commission staff.

702 (5) If a majority of the commission determines that a continuance is necessary to obtain
703 further evidence and testimony, to accommodate administrative needs, or to accommodate the
704 attendance of commission members, witnesses, or a party, the commission shall:

705 (a) adjourn and continue the meeting to a future date and time after notice to the
706 parties; and

707 (b) establish that future date and time by majority vote.

708 Section 22. Section **11-49-702** is enacted to read:

709 **11-49-702. Record -- Recording of meetings.**

710 (1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or
711 other recording device in a meeting authorized by this part.

712 (b) (i) The commission shall keep an audio or video recording of all portions of each
713 meeting authorized by this part.

714 (ii) If the commission elects, by a majority vote, to release the commission's
715 recommendation in a public meeting, the meeting may, upon a majority vote of the
716 commission, be opened to cameras or other recording devices.

717 (2) In addition to the recording required in Subsection (1), the chair shall ensure that a
718 record of the meeting or hearing is made, which shall include:

719 (a) official minutes taken during the meeting or hearing, if any;

720 (b) copies of all documents or other items admitted into evidence by the commission;

721 (c) copies of a document or written order or ruling issued by the chair or the
722 commission; and

723 (d) any other information that a majority of the commission or the chair directs.

724 (3) Except for the recommendation prepared by the commission, which shall be either
725 a private or public record as determined in Section 11-49-704, any recording, testimony,
726 evidence, or other record of a meeting authorized by this part is a private record under Section
727 63G-2-302 and may not be disclosed.

728 Section 23. Section **11-49-703** is enacted to read:

729 **11-49-703. Commission deliberations.**

730 (1) After each party has presented a closing argument, the commission shall, at the
731 direction of the chair, begin its private deliberations:

732 (a) immediately after conclusion of the closing arguments; or

733 (b) at a future meeting of the commission, on a date and time determined by a majority
734 of the members of the commission.

735 (2) (a) The chair of the commission shall conduct the deliberations.

736 (b) Upon a motion made by a commission member, the commission may exclude
737 commission staff from all or a portion of the deliberations by a majority vote of the
738 commission.

739 (3) (a) During deliberations, for each allegation reviewed by the commission, each
740 member shall determine and cast a vote stating:

- 741 (i) whether the allegation is:
742 (A) proven by clear and convincing evidence; or
743 (B) not proven; and
744 (ii) for each allegation proven, whether the commission would recommend to the
745 appropriate political subdivision governing body to take one or more of the following actions:
746 (A) censure;
747 (B) in the case of a political subdivision employee, termination;
748 (C) in the case of a political subdivision officer, removal from office; or
749 (D) any other action or reprimand that the commission determines is appropriate.
750 (b) A verbal roll call vote shall be taken on each allegation, each recommended action
751 described in Subsection (3)(a)(ii) on each allegation, and each member's vote shall be recorded.
752 (4) (a) A count is not considered to be proven unless four of the five members of the
753 commission vote that the count is proven.
754 (b) A count that is not considered to be proven is dismissed.
755 (c) (i) Before the commission issues its recommendation in accordance with Section
756 11-49-704, the commission may, upon a majority vote, reconsider and hold a new vote on an
757 allegation.
758 (ii) A motion to reconsider a vote may only be made by a member of the commission
759 who voted that the allegation was not proved.
760 (5) At the conclusion of deliberations, the commission shall prepare its
761 recommendations as provided in Sections 11-49-704 and 11-49-705.
762 Section 24. Section **11-49-704** is enacted to read:
763 **11-49-704. Recommendations of commission.**
764 (1) If the commission determines that no allegations in the complaint were proved, the
765 commission shall:
766 (a) issue and enter into the record an order that the complaint is dismissed because no
767 allegations in the complaint were found to have been proved;
768 (b) classify all recordings, testimony, evidence, orders, findings, and other records
769 directly relating to the meetings authorized by this part as private records under Section
770 63G-2-302;
771 (c) provide notice of the determination, in a manner determined by a majority vote of

772 the commission, to:

773 (i) the respondent; and

774 (ii) the first complainant named on the complaint; and

775 (d) provide notice to each person named in Subsection (1)(c) that, under the provisions
776 of Section 11-49-502 and other provisions of this chapter, a person who discloses the findings
777 of the commission in violation of any provision of this chapter is in contempt of the
778 commission and is subject to penalties for contempt.

779 (2) If the commission determines that one or more of the allegations in the complaint
780 were proved, the commission shall:

781 (a) if one or more allegations were not found to have been proven, enter into the record
782 an order dismissing those unproven allegations;

783 (b) prepare a written recommendation to the applicable political subdivision governing
784 body that:

785 (i) lists the name of each complainant;

786 (ii) lists the name of the respondent;

787 (iii) states the date of the recommendation;

788 (iv) for each allegation that was found to be proven:

789 (A) provides a reference to the statute or criminal provision allegedly violated;

790 (B) states the number and names of commission members voting that the allegation
791 was proved and the number and names of commission members voting that the allegation was
792 not proved;

793 (C) at the option of those members voting that the allegation was proved, includes a
794 statement by one or all of those members stating the reasons for voting that the allegation was
795 proved, provided that the statement does not cite specific evidence, specific testimony, or
796 specific witnesses; and

797 (D) at the option of those members voting that the allegation was not proved, includes
798 a statement by one or all of those members stating the reasons for voting that the allegation was
799 not proved, provided that the statement does not cite specific evidence, specific testimony, or
800 specific witnesses;

801 (v) contains any general statement that is adopted for inclusion in the recommendation
802 by a majority of the members of the commission;

803 (vi) contains a statement referring the allegations found to have been proved to the
804 appropriate political subdivision governing body for review and, if necessary, further action;

805 (vii) contains a statement referring to each allegation the commission's
806 recommendation under Subsection 11-49-703 (3)(a)(ii);

807 (viii) states the name of each member of the commission; and

808 (ix) is signed by each commission member;

809 (c) direct staff to publicly release the recommendation, the complaint, and the
810 response, subject to the redaction of any allegations that were dismissed by the commission;

811 and

812 (d) classify all other recordings, testimony, evidence, orders, findings, and other
813 records directly relating to the meetings and hearings authorized by this part as private records
814 under Section 63G-2-302.

815 (3) The commission shall ensure that a copy of the recommendation is made publicly
816 available and promptly provided to the respondent and the first complainant named on the
817 complaint.

818 (4) The commission shall ensure that, within five business days of the date of issuance
819 of the recommendation:

820 (a) the complaint and the response are redacted to remove references to those
821 allegations found not to have been proven by the commission, if one or more allegations were
822 found not to have been proven; and

823 (b) the following documents are made publicly available and are provided to the
824 political subdivision governing body:

825 (i) a cover letter referring the allegations contained in the edited complaint to the
826 political subdivision governing body for review;

827 (ii) a copy of the edited complaint;

828 (iii) a copy of the edited response; and

829 (iv) a copy of the recommendation.

830 Section 25. Section **11-49-705** is enacted to read:

831 **11-49-705. Criminal allegation -- Recommendation to county or district attorney.**

832 (1) If the commission finds that a political subdivision officer or employee allegedly
833 violated a criminal provision, and the officer or employee has not already been charged with

834 the criminal violation, the commission shall, in addition to sending a recommendation to a
835 political subdivision governing body in accordance with Section 11-49-704, send a
836 recommendation for further investigation to the county or district attorney of jurisdiction by
837 delivering to the county or district attorney a written recommendation that:

838 (a) lists the name of each complainant;

839 (b) lists the name of the respondent;

840 (c) states the date of the recommendation;

841 (d) for each allegation of a criminal violation, provide a reference to the criminal
842 provision allegedly violated;

843 (e) includes a general statement that is adopted by a majority of the members of the
844 commission; and

845 (f) gives the name of the political subdivision governing body that the commission sent
846 a recommendation to in accordance with Section 11-49-704.

847 (2) If the commission sends a recommendation in accordance with Subsection (1)(a),
848 the commission shall enter into the record:

849 (a) a copy of the recommendation; and

850 (b) the name of the county or district attorney of jurisdiction to whom it was sent.

851 (3) A recommendation prepared and delivered in accordance with this section is a
852 public record.

853 Section 26. Section **11-49-706** is enacted to read:

854 **11-49-706. Action by political subdivision governing body.**

855 A political subdivision governing body that receives a recommendation in accordance
856 with Section 11-49-704 shall:

857 (1) review the recommendation; and

858 (2) take further action in accordance with a political subdivision's governing ordinance,
859 bylaws, or other applicable governing rule.

860 Section 27. Section **17-16a-11** is amended to read:

861 **17-16a-11. County ethics commission -- Complaints charging violations --**

862 **Procedure.**

863 (1) A county may establish by ordinance an ethics commission to review a complaint,
864 except as provided in Subsection (3), against a person subject:

865 (a) to this part for a violation of a provision of this part; or

866 (b) to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

867 (2) Except as provided in Subsection (3), a person filing a complaint for a violation of

868 this part or Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act may file the

869 complaint:

870 (a) with the county ethics commission, if the county has established a county ethics

871 commission in accordance with Subsection (1); or

872 (b) with the Political Subdivisions Ethics Commission established in accordance with

873 Title 11, Chapter 49, Political Subdivisions Ethics Commission.

874 ~~[(1)]~~ (3) Any complaint against a person who is under the merit system, charging that

875 person with a violation of this part, shall be filed and processed in accordance with the

876 provisions of the merit system.

877 ~~[(2) If the person charged with the violation is not under any merit system, then the~~

878 ~~complaint shall be filed with the commission which shall investigate the complaint and shall~~

879 ~~give the person an opportunity to be heard. A written report of the findings and the~~

880 ~~recommendation of the commission shall be filed with the governing body. If the governing~~

881 ~~body finds that the person has violated this part, it may dismiss, suspend, or take such other~~

882 ~~appropriate action with respect to the person.]~~

883 Section 28. Section **63G-2-302** is amended to read:

884 **63G-2-302. Private records.**

885 (1) The following records are private:

886 (a) records concerning an individual's eligibility for unemployment insurance benefits,
887 social services, welfare benefits, or the determination of benefit levels;

888 (b) records containing data on individuals describing medical history, diagnosis,
889 condition, treatment, evaluation, or similar medical data;

890 (c) records of publicly funded libraries that when examined alone or with other records
891 identify a patron;

892 (d) records received by or generated by or for:

893 (i) the Independent Legislative Ethics Commission, except for:

894 (A) the commission's summary data report that is required under legislative rule; and

895 (B) any other document that is classified as public under legislative rule; or

896 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
897 unless the record is classified as public under legislative rule;

898 (e) records received or generated for a Senate confirmation committee concerning
899 character, professional competence, or physical or mental health of an individual:

900 (i) if prior to the meeting, the chair of the committee determines release of the records:

901 (A) reasonably could be expected to interfere with the investigation undertaken by the
902 committee; or

903 (B) would create a danger of depriving a person of a right to a fair proceeding or
904 impartial hearing; and

905 (ii) after the meeting, if the meeting was closed to the public;

906 (f) employment records concerning a current or former employee of, or applicant for
907 employment with, a governmental entity that would disclose that individual's home address,
908 home telephone number, Social Security number, insurance coverage, marital status, or payroll
909 deductions;

910 (g) records or parts of records under Section 63G-2-303 that a current or former
911 employee identifies as private according to the requirements of that section;

912 (h) that part of a record indicating a person's Social Security number or federal
913 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
914 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

915 (i) that part of a voter registration record identifying a voter's driver license or
916 identification card number, Social Security number, or last four digits of the Social Security
917 number;

918 (j) a record that:

919 (i) contains information about an individual;

920 (ii) is voluntarily provided by the individual; and

921 (iii) goes into an electronic database that:

922 (A) is designated by and administered under the authority of the Chief Information
923 Officer; and

924 (B) acts as a repository of information about the individual that can be electronically
925 retrieved and used to facilitate the individual's online interaction with a state agency;

926 (k) information provided to the Commissioner of Insurance under:

- 927 (i) Subsection 31A-23a-115(2)(a);
- 928 (ii) Subsection 31A-23a-302(3); or
- 929 (iii) Subsection 31A-26-210(3);
- 930 (l) information obtained through a criminal background check under Title 11, Chapter
- 931 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 932 (m) information provided by an offender that is:
- 933 (i) required by the registration requirements of Section 77-27-21.5; and
- 934 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);
- 935 (n) a statement and any supporting documentation filed with the attorney general in
- 936 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 937 homeland security;
- 938 (o) electronic toll collection customer account information received or collected under
- 939 Section 72-6-118, including contact and payment information and customer travel data[-];
- 940 (p) an email address provided by a military or overseas voter under Section
- 941 20A-16-501; [~~and~~]
- 942 (q) a completed military-overseas ballot that is electronically transmitted under Title
- 943 20A, Chapter 16, Uniform Military and Overseas Voters Act[-]; and
- 944 (r) records received by or generated by or for the Political Subdivision Ethics
- 945 Commission established in Section 11-49-201, except for:
- 946 (i) the commission's summary data report that is required in Section 11-49-202; and
- 947 (ii) any other document that is classified in accordance with Title 11, Chapter 49,
- 948 Political Subdivisions Ethics Commission.
- 949 (2) The following records are private if properly classified by a governmental entity:
- 950 (a) records concerning a current or former employee of, or applicant for employment
- 951 with a governmental entity, including performance evaluations and personal status information
- 952 such as race, religion, or disabilities, but not including records that are public under Subsection
- 953 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);
- 954 (b) records describing an individual's finances, except that the following are public:
- 955 (i) records described in Subsection 63G-2-301(2);
- 956 (ii) information provided to the governmental entity for the purpose of complying with
- 957 a financial assurance requirement; or

- 958 (iii) records that must be disclosed in accordance with another statute;
- 959 (c) records of independent state agencies if the disclosure of those records would
- 960 conflict with the fiduciary obligations of the agency;
- 961 (d) other records containing data on individuals the disclosure of which constitutes a
- 962 clearly unwarranted invasion of personal privacy;
- 963 (e) records provided by the United States or by a government entity outside the state
- 964 that are given with the requirement that the records be managed as private records, if the
- 965 providing entity states in writing that the record would not be subject to public disclosure if
- 966 retained by it; and

967 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
 968 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
 969 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

970 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
 971 records, statements, history, diagnosis, condition, treatment, and evaluation.

972 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
 973 doctors, or affiliated entities are not private records or controlled records under Section
 974 63G-2-304 when the records are sought:

- 975 (i) in connection with any legal or administrative proceeding in which the patient's
- 976 physical, mental, or emotional condition is an element of any claim or defense; or
- 977 (ii) after a patient's death, in any legal or administrative proceeding in which any party
- 978 relies upon the condition as an element of the claim or defense.

979 (c) Medical records are subject to production in a legal or administrative proceeding
 980 according to state or federal statutes or rules of procedure and evidence as if the medical
 981 records were in the possession of a nongovernmental medical care provider.

982 Section 29. Section **67-16-15** is enacted to read:

983 **67-16-15. Complaint -- Political Subdivisions Ethics Commission.**

984 A person may file a complaint for an alleged violation of this chapter by a political
 985 subdivision officer or employee in accordance with Title 11, Chapter 49, Political Subdivisions
 986 Ethics Commission.

Legislative Review Note
as of 2-7-12 5:01 PM

Office of Legislative Research and General Counsel