

**INDEPENDENT EXECUTIVE BRANCH ETHICS
COMMISSION**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Dean Sanpei

LONG TITLE

General Description:

This bill establishes the Independent Executive Branch Ethics Commission.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Independent Executive Branch Ethics Commission;
- ▶ addresses provisions relating to classification of records and the closing of meetings

of the commission;

- ▶ describes the membership, duties, jurisdiction, and powers of the commission;
- ▶ describes procedures for filing, responding to, and hearing ethics complaints;
- ▶ provides for the commission to determine whether an allegation in an ethics

complaint has merit; and

- ▶ provides that a person may be held in contempt of the commission for failure to comply with a subpoena issued by, or an order of, the commission or the chair.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

- 29 **52-4-204**, as last amended by Laws of Utah 2012, Chapter 202
- 30 **52-4-205**, as last amended by Laws of Utah 2012, Chapters 327 and 365
- 31 **58-1-301**, as last amended by Laws of Utah 2008, Chapter 382
- 32 **58-55-302**, as last amended by Laws of Utah 2012, Chapter 192
- 33 **61-1-4**, as last amended by Laws of Utah 2011, Chapter 317
- 34 **61-2f-203**, as last amended by Laws of Utah 2012, Chapter 166
- 35 **63G-2-202**, as last amended by Laws of Utah 2012, Chapter 377
- 36 **63G-2-301**, as last amended by Laws of Utah 2012, Chapter 377
- 37 **63G-2-302**, as last amended by Laws of Utah 2012, Chapters 74, 145, and 202
- 38 **63G-2-303**, as last amended by Laws of Utah 2012, Chapter 232
- 39 **63G-2-803**, as last amended by Laws of Utah 2009, Chapter 44

40 ENACTS:

- 41 **63A-13-101**, Utah Code Annotated 1953
- 42 **63A-13-102**, Utah Code Annotated 1953
- 43 **63A-13-201**, Utah Code Annotated 1953
- 44 **63A-13-202**, Utah Code Annotated 1953
- 45 **63A-13-203**, Utah Code Annotated 1953
- 46 **63A-13-301**, Utah Code Annotated 1953
- 47 **63A-13-302**, Utah Code Annotated 1953
- 48 **63A-13-303**, Utah Code Annotated 1953
- 49 **63A-13-401**, Utah Code Annotated 1953
- 50 **63A-13-402**, Utah Code Annotated 1953
- 51 **63A-13-403**, Utah Code Annotated 1953
- 52 **63A-13-501**, Utah Code Annotated 1953
- 53 **63A-13-502**, Utah Code Annotated 1953
- 54 **63A-13-503**, Utah Code Annotated 1953
- 55 **63A-13-504**, Utah Code Annotated 1953
- 56 **63A-13-601**, Utah Code Annotated 1953
- 57 **63A-13-602**, Utah Code Annotated 1953
- 58 **63A-13-603**, Utah Code Annotated 1953

- 59 **63A-13-604**, Utah Code Annotated 1953
- 60 **63A-13-605**, Utah Code Annotated 1953
- 61 **63A-13-606**, Utah Code Annotated 1953
- 62 **63A-13-701**, Utah Code Annotated 1953
- 63 **63A-13-702**, Utah Code Annotated 1953
- 64 **63A-13-703**, Utah Code Annotated 1953
- 65 **63A-13-704**, Utah Code Annotated 1953
- 66 **63A-13-705**, Utah Code Annotated 1953
- 67 **63A-13-706**, Utah Code Annotated 1953
- 68 **63A-13-707**, Utah Code Annotated 1953
- 69 **63A-13-708**, Utah Code Annotated 1953

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

72 Section 1. Section **52-4-204** is amended to read:

73 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**
 74 **meeting recorded.**

75 (1) A closed meeting may be held if:

76 (a) (i) a quorum is present;

77 (ii) the meeting is an open meeting for which notice has been given under Section
 78 52-4-202; and

79 (iii) (A) two-thirds of the members of the public body present at the open meeting vote
 80 to approve closing the meeting;

81 (B) for a meeting that is required to be closed under Section 52-4-205, if a majority of
 82 the members of the public body present at an open meeting vote to approve closing the
 83 meeting;

84 (C) for an ethics committee of the Legislature that is conducting an open meeting for
 85 the purpose of reviewing an ethics complaint, a majority of the members present vote to
 86 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
 87 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
 88 complaint; or

89 (D) for the Political Subdivisions Ethics Review Commission established in Section

90 11-49-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint
91 in accordance with Section 11-49-701, a majority of the members present vote to approve
92 closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary,
93 or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

94 (b) (i) for the Independent Legislative Ethics Commission, the closed meeting is
95 convened for the purpose of conducting business relating to the receipt or review of an ethics
96 complaint, provided that public notice of the closed meeting is given under Section 52-4-202,
97 with the agenda for the meeting stating that the meeting will be closed for the purpose of
98 "conducting business relating to the receipt or review of ethics complaints"; [or]

99 (ii) for the Political Subdivisions Ethics Review Commission established in Section
100 11-49-201, the closed meeting is convened for the purpose of conducting business relating to
101 the preliminary review of an ethics complaint in accordance with Section 11-49-602, provided
102 that public notice of the closed meeting is given under Section 52-4-202, with the agenda for
103 the meeting stating that the meeting will be closed for the purpose of "conducting business
104 relating to the review of ethics complaints"[-]; or

105 (iii) for the Independent Executive Branch Ethics Commission created in Section
106 63A-13-202, the closed meeting is convened for the purpose of conducting business relating to
107 an ethics complaint, provided that public notice of the closed meeting is given under Section
108 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the
109 purpose of "conducting business relating to an ethics complaint."

110 (2) A closed meeting is not allowed unless each matter discussed in the closed meeting
111 is permitted under Section 52-4-205.

112 (3) An ordinance, resolution, rule, regulation, contract, or appointment may not be
113 approved at a closed meeting.

114 (4) The following information shall be publicly announced and entered on the minutes
115 of the open meeting at which the closed meeting was approved:

116 (a) the reason or reasons for holding the closed meeting;

117 (b) the location where the closed meeting will be held; and

118 (c) the vote by name, of each member of the public body, either for or against the
119 motion to hold the closed meeting.

120 (5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be

121 construed to require any meeting to be closed to the public.

122 Section 2. Section **52-4-205** is amended to read:

123 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
124 **meetings.**

125 (1) A closed meeting described under Section 52-4-204 may only be held for:

126 (a) except as provided in Subsection (3), discussion of the character, professional
127 competence, or physical or mental health of an individual;

128 (b) strategy sessions to discuss collective bargaining;

129 (c) strategy sessions to discuss pending or reasonably imminent litigation;

130 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
131 including any form of a water right or water shares, if public discussion of the transaction
132 would:

133 (i) disclose the appraisal or estimated value of the property under consideration; or

134 (ii) prevent the public body from completing the transaction on the best possible terms;

135 (e) strategy sessions to discuss the sale of real property, including any form of a water
136 right or water shares, if:

137 (i) public discussion of the transaction would:

138 (A) disclose the appraisal or estimated value of the property under consideration; or

139 (B) prevent the public body from completing the transaction on the best possible terms;

140 (ii) the public body previously gave public notice that the property would be offered for
141 sale; and

142 (iii) the terms of the sale are publicly disclosed before the public body approves the
143 sale;

144 (f) discussion regarding deployment of security personnel, devices, or systems;

145 (g) investigative proceedings regarding allegations of criminal misconduct;

146 (h) as relates to the Independent Legislative Ethics Commission, conducting business
147 relating to the receipt or review of ethics complaints;

148 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
149 Subsection 52-4-204(1)(a)(iii)~~(B)~~(C);

150 (j) as relates to the Independent Executive Branch Ethics Commission created in
151 Section 63A-13-202, conducting business relating to an ethics complaint;

152 [~~(j)~~] (k) as relates to a county legislative body, discussing commercial information as
153 defined in Section 59-1-404;

154 [~~(k)~~] (l) as relates to the Utah Higher Education Assistance Authority and its appointed
155 board of directors, discussing fiduciary or commercial information as defined in Section
156 53B-12-102; or

157 [~~(l)~~] (m) a purpose for which a meeting is required to be closed under Subsection (2).

158 (2) The following meetings shall be closed:

159 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
160 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
161 described in Subsections 62A-16-301(2) and (4); and

162 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

163 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
164 responses to the report described in Subsections 62A-16-301(2) and (4); or

165 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

166 (3) In a closed meeting, a public body may not:

167 (a) interview a person applying to fill an elected position;

168 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
169 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
170 or

171 (c) discuss the character, professional competence, or physical or mental health of the
172 person whose name was submitted for consideration to fill a midterm vacancy or temporary
173 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
174 Temporary Absence in Elected Office.

175 Section 3. Section **58-1-301** is amended to read:

176 **58-1-301. License application -- Licensing procedure.**

177 (1) (a) Each license applicant shall apply to the division in writing upon forms
178 available from the division. Each completed application shall contain documentation of the
179 particular qualifications required of the applicant, shall include the applicant's Social Security
180 number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

181 (b) An applicant's Social Security number is a private record under Subsection
182 63G-2-302(1)[~~(h)~~](i).

183 (2) (a) A license shall be issued to an applicant who submits a complete application if
184 the division determines that the applicant meets the qualifications of licensure.

185 (b) A written notice of additional proceedings shall be provided to an applicant who
186 submits a complete application, but who has been, is, or will be placed under investigation by
187 the division for conduct directly bearing upon the applicant's qualifications for licensure, if the
188 outcome of additional proceedings is required to determine the division's response to the
189 application.

190 (c) A written notice of denial of licensure shall be provided to an applicant who
191 submits a complete application if the division determines that the applicant does not meet the
192 qualifications of licensure.

193 (d) A written notice of incomplete application and conditional denial of licensure shall
194 be provided to an applicant who submits an incomplete application. This notice shall advise
195 the applicant that the application is incomplete and that the application is denied, unless the
196 applicant corrects the deficiencies within the time period specified in the notice and otherwise
197 meets all qualifications for licensure.

198 (3) Before any person is issued a license under this title, all requirements for that
199 license as established under this title and by rule shall be met.

200 (4) If all requirements are met for the specific license, the division shall issue the
201 license.

202 Section 4. Section **58-55-302** is amended to read:

203 **58-55-302. Qualifications for licensure.**

204 (1) Each applicant for a license under this chapter shall:

205 (a) submit an application prescribed by the division;

206 (b) pay a fee as determined by the department under Section 63J-1-504;

207 (c) (i) meet the examination requirements established by rule by the commission with
208 the concurrence of the director, except for the classifications of apprentice plumber and
209 apprentice electrician for whom no examination is required; or

210 (ii) if required in Section 58-55-304, the individual qualifier must pass the required
211 examination if the applicant is a business entity;

212 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;

213 (e) if an applicant for a contractor's license:

214 (i) produce satisfactory evidence of financial responsibility, except for a construction
215 trades instructor for whom evidence of financial responsibility is not required;

216 (ii) produce satisfactory evidence of knowledge and experience in the construction
217 industry and knowledge of the principles of the conduct of business as a contractor, reasonably
218 necessary for the protection of the public health, safety, and welfare;

219 (iii) (A) be a licensed master electrician if an applicant for an electrical contractor's
220 license or a licensed master residential electrician if an applicant for a residential electrical
221 contractor's license;

222 (B) be a licensed master plumber if an applicant for a plumbing contractor's license or
223 a licensed master residential plumber if an applicant for a residential plumbing contractor's
224 license; or

225 (C) be a licensed elevator mechanic and produce satisfactory evidence of three years
226 experience as an elevator mechanic if an applicant for an elevator contractor's license; and

227 (iv) when the applicant is an unincorporated entity, provide a list of the one or more
228 individuals who hold an ownership interest in the applicant as of the day on which the
229 application is filed that includes for each individual:

230 (A) the individual's name, address, birthdate, and Social Security number; and

231 (B) whether the individual will engage in a construction trade; and

232 (f) if an applicant for a construction trades instructor license, satisfy any additional
233 requirements established by rule.

234 (2) After approval of an applicant for a contractor's license by the applicable board and
235 the division, the applicant shall file the following with the division before the division issues
236 the license:

237 (a) proof of workers' compensation insurance which covers employees of the applicant
238 in accordance with applicable Utah law;

239 (b) proof of public liability insurance in coverage amounts and form established by rule
240 except for a construction trades instructor for whom public liability insurance is not required;
241 and

242 (c) proof of registration as required by applicable law with the:

243 (i) Utah Department of Commerce;

244 (ii) Division of Corporations and Commercial Code;

245 (iii) Unemployment Insurance Division in the Department of Workforce Services, for
246 purposes of Title 35A, Chapter 4, Employment Security Act;

247 (iv) State Tax Commission; and

248 (v) Internal Revenue Service.

249 (3) In addition to the general requirements for each applicant in Subsection (1),
250 applicants shall comply with the following requirements to be licensed in the following
251 classifications:

252 (a) (i) A master plumber shall produce satisfactory evidence that the applicant:

253 (A) has been a licensed journeyman plumber for at least two years and had two years of
254 supervisory experience as a licensed journeyman plumber in accordance with division rule;

255 (B) has received at least an associate of applied science degree or similar degree
256 following the completion of a course of study approved by the division and had one year of
257 supervisory experience as a licensed journeyman plumber in accordance with division rule; or

258 (C) meets the qualifications determined by the division in collaboration with the board
259 to be equivalent to Subsection (3)(a)(i)(A) or (B).

260 (ii) An individual holding a valid Utah license as a journeyman plumber, based on at
261 least four years of practical experience as a licensed apprentice under the supervision of a
262 licensed journeyman plumber and four years as a licensed journeyman plumber, in effect
263 immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current
264 master plumber license under this chapter, and satisfies the requirements of this Subsection
265 (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

266 (iii) An individual holding a valid plumbing contractor's license or residential
267 plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5,
268 2008:

269 (A) considered to hold a current master plumber license under this chapter if licensed
270 as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this
271 Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section
272 58-55-303; and

273 (B) considered to hold a current residential master plumber license under this chapter if
274 licensed as a residential plumbing contractor and a residential journeyman plumber, and
275 satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of

276 that license under Section 58-55-303.

277 (b) A master residential plumber applicant shall produce satisfactory evidence that the
278 applicant:

279 (i) has been a licensed residential journeyman plumber for at least two years and had
280 two years of supervisory experience as a licensed residential journeyman plumber in
281 accordance with division rule; or

282 (ii) meets the qualifications determined by the division in collaboration with the board
283 to be equivalent to Subsection (3)(b)(i).

284 (c) A journeyman plumber applicant shall produce satisfactory evidence of:

285 (i) successful completion of the equivalent of at least four years of full-time training
286 and instruction as a licensed apprentice plumber under supervision of a licensed master
287 plumber or journeyman plumber and in accordance with a planned program of training
288 approved by the division;

289 (ii) at least eight years of full-time experience approved by the division in collaboration
290 with the Plumbers Licensing Board; or

291 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
292 equivalent to Subsection (3)(c)(i) or (c)(ii).

293 (d) A residential journeyman plumber shall produce satisfactory evidence of:

294 (i) completion of the equivalent of at least three years of full-time training and
295 instruction as a licensed apprentice plumber under the supervision of a licensed residential
296 master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in
297 accordance with a planned program of training approved by the division;

298 (ii) completion of at least six years of full-time experience in a maintenance or repair
299 trade involving substantial plumbing work; or

300 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
301 (3)(d)(i) or (d)(ii).

302 (e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be
303 in accordance with the following:

304 (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be
305 under the immediate supervision of a licensed master plumber, licensed residential master
306 plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

307 (ii) a licensed apprentice plumber in the fourth through tenth year of training may work
308 without supervision for a period not to exceed eight hours in any 24-hour period, but if the
309 apprentice does not become a licensed journeyman plumber or licensed residential journeyman
310 plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer
311 applies.

312 (f) A master electrician applicant shall produce satisfactory evidence that the applicant:

313 (i) is a graduate electrical engineer of an accredited college or university approved by
314 the division and has one year of practical electrical experience as a licensed apprentice
315 electrician;

316 (ii) is a graduate of an electrical trade school, having received an associate of applied
317 sciences degree following successful completion of a course of study approved by the division,
318 and has two years of practical experience as a licensed journeyman electrician;

319 (iii) has four years of practical experience as a journeyman electrician; or

320 (iv) meets the qualifications determined by the board to be equivalent to Subsection
321 (3)(f)(i), (ii), or (iii).

322 (g) A master residential electrician applicant shall produce satisfactory evidence that
323 the applicant:

324 (i) has at least two years of practical experience as a residential journeyman electrician;
325 or

326 (ii) meets the qualifications determined by the board to be equivalent to this practical
327 experience.

328 (h) A journeyman electrician applicant shall produce satisfactory evidence that the
329 applicant:

330 (i) has successfully completed at least four years of full-time training and instruction as
331 a licensed apprentice electrician under the supervision of a master electrician or journeyman
332 electrician and in accordance with a planned training program approved by the division;

333 (ii) has at least eight years of full-time experience approved by the division in
334 collaboration with the Electricians Licensing Board; or

335 (iii) meets the qualifications determined by the board to be equivalent to Subsection
336 (3)(h)(i) or (ii).

337 (i) A residential journeyman electrician applicant shall produce satisfactory evidence

338 that the applicant:

339 (i) has successfully completed two years of training in an electrical training program
340 approved by the division;

341 (ii) has four years of practical experience in wiring, installing, and repairing electrical
342 apparatus and equipment for light, heat, and power under the supervision of a licensed master,
343 journeyman, residential master, or residential journeyman electrician; or

344 (iii) meets the qualifications determined by the division and applicable board to be
345 equivalent to Subsection (3)(i)(i) or (ii).

346 (j) The conduct of licensed apprentice electricians and their licensed supervisors shall
347 be in accordance with the following:

348 (i) A licensed apprentice electrician shall be under the immediate supervision of a
349 licensed master, journeyman, residential master, or residential journeyman electrician. An
350 apprentice in the fourth year of training may work without supervision for a period not to
351 exceed eight hours in any 24-hour period.

352 (ii) A licensed master, journeyman, residential master, or residential journeyman
353 electrician may have under immediate supervision on a residential project up to three licensed
354 apprentice electricians.

355 (iii) A licensed master or journeyman electrician may have under immediate
356 supervision on nonresidential projects only one licensed apprentice electrician.

357 (k) An alarm company applicant shall:

358 (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of
359 the applicant who:

360 (A) demonstrates 6,000 hours of experience in the alarm company business;

361 (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm
362 company business or in a construction business; and

363 (C) passes an examination component established by rule by the commission with the
364 concurrence of the director;

365 (ii) if a corporation, provide:

366 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
367 of all corporate officers, directors, and those responsible management personnel employed
368 within the state or having direct responsibility for managing operations of the applicant within

369 the state; and

370 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
371 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
372 shall not be required if the stock is publicly listed and traded;

373 (iii) if a limited liability company, provide:

374 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
375 of all company officers, and those responsible management personnel employed within the
376 state or having direct responsibility for managing operations of the applicant within the state;
377 and

378 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
379 of all individuals owning 5% or more of the equity of the company;

380 (iv) if a partnership, provide the names, addresses, dates of birth, Social Security
381 numbers, and fingerprint cards of all general partners, and those responsible management
382 personnel employed within the state or having direct responsibility for managing operations of
383 the applicant within the state;

384 (v) if a proprietorship, provide the names, addresses, dates of birth, Social Security
385 numbers, and fingerprint cards of the proprietor, and those responsible management personnel
386 employed within the state or having direct responsibility for managing operations of the
387 applicant within the state;

388 (vi) if a trust, provide the names, addresses, dates of birth, Social Security numbers,
389 and fingerprint cards of the trustee, and those responsible management personnel employed
390 within the state or having direct responsibility for managing operations of the applicant within
391 the state;

392 (vii) be of good moral character in that officers, directors, shareholders described in
393 Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel
394 have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other
395 crime that when considered with the duties and responsibilities of an alarm company is
396 considered by the board to indicate that the best interests of the public are served by granting
397 the applicant a license;

398 (viii) document that none of the applicant's officers, directors, shareholders described
399 in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management

400 personnel have been declared by any court of competent jurisdiction incompetent by reason of
401 mental defect or disease and not been restored;

402 (ix) document that none of the applicant's officers, directors, shareholders described in
403 Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are
404 currently suffering from habitual drunkenness or from drug addiction or dependence;

405 (x) file and maintain with the division evidence of:

406 (A) comprehensive general liability insurance in form and in amounts to be established
407 by rule by the commission with the concurrence of the director;

408 (B) workers' compensation insurance that covers employees of the applicant in
409 accordance with applicable Utah law; and

410 (C) registration as is required by applicable law with the:

411 (I) Division of Corporations and Commercial Code;

412 (II) Unemployment Insurance Division in the Department of Workforce Services, for
413 purposes of Title 35A, Chapter 4, Employment Security Act;

414 (III) State Tax Commission; and

415 (IV) Internal Revenue Service; and

416 (xi) meet with the division and board.

417 (l) Each applicant for licensure as an alarm company agent shall:

418 (i) submit an application in a form prescribed by the division accompanied by
419 fingerprint cards;

420 (ii) pay a fee determined by the department under Section 63J-1-504;

421 (iii) be of good moral character in that the applicant has not been convicted of a felony,
422 a misdemeanor involving moral turpitude, or any other crime that when considered with the
423 duties and responsibilities of an alarm company agent is considered by the board to indicate
424 that the best interests of the public are served by granting the applicant a license;

425 (iv) not have been declared by any court of competent jurisdiction incompetent by
426 reason of mental defect or disease and not been restored;

427 (v) not be currently suffering from habitual drunkenness or from drug addiction or
428 dependence; and

429 (vi) meet with the division and board if requested by the division or the board.

430 (m) (i) Each applicant for licensure as an elevator mechanic shall:

431 (A) provide documentation of experience and education credits of not less than three
432 years work experience in the elevator industry, in construction, maintenance, or service and
433 repair; and

434 (B) satisfactorily complete a written examination administered by the division
435 established by rule under Section 58-1-203; or

436 (C) provide certificates of completion of an apprenticeship program for elevator
437 mechanics, having standards substantially equal to those of this chapter and registered with the
438 United States Department of Labor Bureau Apprenticeship and Training or a state
439 apprenticeship council.

440 (ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed
441 elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing,
442 repairing, or maintaining an elevator, the contractor may:

443 (I) notify the division of the unavailability of licensed personnel; and

444 (II) request the division issue a temporary elevator mechanic license to an individual
445 certified by the contractor as having an acceptable combination of documented experience and
446 education to perform the work described in this Subsection (3)(m)(ii)(A).

447 (B) (I) The division may issue a temporary elevator mechanic license to an individual
448 certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by
449 the appropriate fee as determined by the department under Section 63J-1-504.

450 (II) The division shall specify the time period for which the license is valid and may
451 renew the license for an additional time period upon its determination that a shortage of
452 licensed elevator mechanics continues to exist.

453 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
454 division may make rules establishing when Federal Bureau of Investigation records shall be
455 checked for applicants as an alarm company or alarm company agent.

456 (5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and
457 (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
458 Department of Public Safety with the division's request to:

459 (a) conduct a search of records of the Department of Public Safety for criminal history
460 information relating to each applicant for licensure as an alarm company or alarm company
461 agent and each applicant's officers, directors, shareholders described in Subsection

462 (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

463 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
464 requiring a check of records of the Federal Bureau of Investigation for criminal history
465 information under this section.

466 (6) The Department of Public Safety shall send to the division:

467 (a) a written record of criminal history, or certification of no criminal history record, as
468 contained in the records of the Department of Public Safety in a timely manner after receipt of
469 a fingerprint card from the division and a request for review of Department of Public Safety
470 records; and

471 (b) the results of the Federal Bureau of Investigation review concerning an applicant in
472 a timely manner after receipt of information from the Federal Bureau of Investigation.

473 (7) (a) The division shall charge each applicant for licensure as an alarm company or
474 alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of
475 performing the records reviews under this section.

476 (b) The division shall pay the Department of Public Safety the costs of all records
477 reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the
478 costs of records reviews under this section.

479 (8) Information obtained by the division from the reviews of criminal history records of
480 the Department of Public Safety and the Federal Bureau of Investigation shall be used or
481 disseminated by the division only for the purpose of determining if an applicant for licensure as
482 an alarm company or alarm company agent is qualified for licensure.

483 (9) (a) An application for licensure under this chapter shall be denied if:

484 (i) the applicant has had a previous license, which was issued under this chapter,
485 suspended or revoked within one year prior to the date of the applicant's application;

486 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

487 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
488 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
489 status, performing similar functions, or directly or indirectly controlling the applicant has
490 served in any similar capacity with any person or entity which has had a previous license,
491 which was issued under this chapter, suspended or revoked within one year prior to the date of
492 the applicant's application; or

- 493 (iii) (A) the applicant is an individual or sole proprietorship; and
494 (B) any owner or agent acting as a qualifier has served in any capacity listed in
495 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
496 this chapter, suspended or revoked within one year prior to the date of the applicant's
497 application.
- 498 (b) An application for licensure under this chapter shall be reviewed by the appropriate
499 licensing board prior to approval if:
- 500 (i) the applicant has had a previous license, which was issued under this chapter,
501 suspended or revoked more than one year prior to the date of the applicant's application;
- 502 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and
503 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
504 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar
505 status, performing similar functions, or directly or indirectly controlling the applicant has
506 served in any similar capacity with any person or entity which has had a previous license,
507 which was issued under this chapter, suspended or revoked more than one year prior to the date
508 of the applicant's application; or
- 509 (iii) (A) the applicant is an individual or sole proprietorship; and
510 (B) any owner or agent acting as a qualifier has served in any capacity listed in
511 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
512 this chapter, suspended or revoked more than one year prior to the date of the applicant's
513 application.
- 514 (10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status
515 report with the division every 90 days after the day on which the license is issued if the licensee
516 has more than five owners who are individuals who:
- 517 (A) own an interest in the contractor that is an unincorporated entity;
518 (B) own, directly or indirectly, less than an 8% interest in the unincorporated entity, as
519 defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah
520 Administrative Rulemaking Act; and
- 521 (C) engage, or will engage, in a construction trade in Utah as an owner of the
522 contractor described in Subsection (10)(a)(i)(A).
- 523 (ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the

524 licensee shall provide the ownership status report with an application for renewal of licensure.

525 (b) An ownership status report required under this Subsection (10) shall:

526 (i) list each addition or deletion of an owner:

527 (A) for the first ownership status report, after the day on which the unincorporated
528 entity is licensed under this chapter; and

529 (B) for a subsequent ownership status report, after the day on which the previous
530 ownership status report is filed;

531 (ii) be in a format prescribed by the division that includes the items on the list provided
532 under Subsection(1)(e)(iv); and

533 (iii) be accompanied by a fee set by the division in accordance with Section 63J-1-504
534 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

535 (c) The division may, at any time, audit an ownership status report under this
536 Subsection (10):

537 (i) to determine if financial responsibility has been demonstrated or maintained as
538 required under Section 58-55-306; and

539 (ii) to determine compliance with Subsection 58-55-501(24) or (25) or Subsection
540 58-55-502(8) or (9).

541 (11) (a) An unincorporated entity that provides labor to an entity licensed under this
542 chapter by providing an individual who owns an interest in the unincorporated entity to engage
543 in a construction trade in Utah shall file with the division:

544 (i) before the individual who owns an interest in the unincorporated entity engages in a
545 construction trade in Utah, a current list of the one or more individuals who hold an ownership
546 interest in the unincorporated entity that includes for each individual:

547 (A) the individual's name, address, birthdate, and Social Security number; and

548 (B) whether the individual will engage in a construction trade; and

549 (ii) every 90 days after the day on which the unincorporated entity provides the list
550 described in Subsection (11)(a)(i), an ownership status report containing the information that
551 would be required under Subsection (10) if the unincorporated entity were a licensed
552 contractor.

553 (b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership
554 status report described in Subsection (11)(a)(ii) an unincorporated entity shall pay a fee set by

555 the division in accordance with Section 63J-1-504.

556 (12) This chapter may not be interpreted to create or support an express or implied
557 independent contractor relationship between an unincorporated entity described in Subsection
558 (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax
559 withholding.

560 (13) A Social Security number provided under Subsection (1)(e)(iv) is a private record
561 under Subsection 63G-2-302(1)(~~h~~)(i).

562 Section 5. Section **61-1-4** is amended to read:

563 **61-1-4. Licensing and notice filing procedure.**

564 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
565 shall obtain an initial or renewal license by filing with the division or its designee an
566 application together with a consent to service of process under Section 61-1-26.

567 (b) (i) The application shall contain the applicant's Social Security number and
568 whatever information the division by rule requires concerning such matters as:

569 (A) the applicant's form and place of organization;

570 (B) the applicant's proposed method of doing business;

571 (C) (I) the qualifications and business history of the applicant; and

572 (II) in the case of a broker-dealer or investment adviser, the qualifications and business
573 history of any partner, officer, or director, any person occupying a similar status or performing
574 similar functions, or any person directly or indirectly controlling the broker-dealer or
575 investment adviser;

576 (D) whether the applicant has been subject to:

577 (I) an injunction, administrative order, or misdemeanor conviction involving a security
578 or any aspect of the securities business; or

579 (II) a felony conviction; and

580 (E) the applicant's financial condition and history.

581 (ii) An applicant's Social Security number is a private record under Subsection
582 63G-2-302(1)(~~h~~)(i).

583 (c) The division may, by rule or order, require an applicant for an initial license to
584 publish an announcement of the application in one or more specified newspapers published in
585 this state.

586 (d) A license or notice filing of a broker-dealer, agent, investment adviser, or
587 investment adviser representative expires on December 31 of each year.

588 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
589 a license becomes effective at noon of the 30th day after an application is filed.

590 (ii) The division may by rule or order specify an earlier effective date and may by order
591 defer the effective date until noon of the 30th day after the filing of any amendment.

592 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one
593 partner, officer, director, or a person occupying a similar status or performing similar functions
594 as a licensed agent of the broker-dealer.

595 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
596 partner, officer, director, or a person occupying a similar status or performing similar functions.

597 (v) (A) For purposes of the activities of a licensee in this state, during the time period
598 that a broker-dealer or investment adviser is licensed in this state:

599 (I) the broker-dealer shall maintain a principal; and

600 (II) the investment adviser shall maintain a designated official.

601 (B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
602 Administrative Rulemaking Act, provide a process for a person to identify for the division:

603 (I) a principal or designated official at the time a license is issued; and

604 (II) a different principal or designated official if:

605 (Aa) a broker-dealer changes its principal; or

606 (Bb) an investment adviser changes its designated official.

607 (C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not
608 required to be separately licensed with the division.

609 (2) Except with respect to a federal covered adviser whose only clients are those
610 described in Subsection 61-1-3(3)(b) or (3)(c)(iii), a federal covered adviser shall file with the
611 division, before acting as a federal covered adviser in this state, a notice filing consisting of the
612 documents filed with the Securities and Exchange Commission as the division by rule or order
613 may require.

614 (3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall
615 pay a reasonable filing fee as determined under Section 61-1-18.4.

616 (b) An applicant for an initial or renewal license as an investment adviser or

617 investment adviser representative who is subject to licensing under this chapter shall pay a
618 reasonable filing fee as determined under Section 61-1-18.4.

619 (c) A person acting as a federal covered adviser in this state shall pay an initial and
620 renewal notice filing fee as determined under Section 61-1-18.4.

621 (d) If the license or renewal is not granted or the application is withdrawn, the division
622 shall retain the fee.

623 (4) A licensed broker-dealer or investment adviser may file an application for licensing
624 of a successor for the unexpired portion of the year. There shall be no filing fee.

625 (5) The division may by rule or order:

626 (a) require a minimum capital for a licensed broker-dealer, subject to the limitations of
627 Section 15 of the Securities Exchange Act of 1934; and

628 (b) establish minimum financial requirements for an investment adviser:

629 (i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940;
630 and

631 (ii) which may include different requirements for an investment adviser who maintains
632 custody of or has discretionary authority over client funds or securities and an investment
633 adviser who does not.

634 (6) (a) The division may by rule or order require a licensed broker-dealer or investment
635 adviser who has custody of or discretionary authority over client funds or securities to post one
636 or more bonds in amounts and under conditions as the division may prescribe, subject to the
637 limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and
638 Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

639 (b) An appropriate deposit of cash or securities may be accepted in lieu of a required
640 bond.

641 (c) A bond may not be required of a licensee whose net capital, or in the case of an
642 investment adviser whose minimum financial requirements, which may be defined by rule,
643 exceeds the amounts required by the division.

644 (d) A bond shall provide for suit on the bond by a person who has a cause of action
645 under Section 61-1-22 and, if the division by rule or order requires, by any person who has a
646 cause of action not arising under this chapter.

647 (e) A bond shall provide that a suit may not be maintained to enforce liability on the

648 bond unless brought before the earlier of:

649 (i) the expiration of five years after the act or transaction constituting the violation; or

650 (ii) the expiration of two years after the discovery by the plaintiff of the facts

651 constituting the violation.

652 Section 6. Section **61-2f-203** is amended to read:

653 **61-2f-203. Licensing requirements.**

654 (1) (a) (i) The division shall determine whether an applicant with a criminal history
655 qualifies for licensure.

656 (ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or
657 places a license on probation, the applicant may petition the commission for de novo review of
658 the application.

659 (b) Except as provided in Subsection (5), the commission shall determine all other
660 qualifications and requirements of an applicant for:

661 (i) a principal broker license;

662 (ii) an associate broker license; or

663 (iii) a sales agent license.

664 (c) The division, with the concurrence of the commission, shall require and pass upon
665 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
666 each applicant for an initial license or for renewal of an existing license.

667 (d) (i) The division, with the concurrence of the commission, shall require an applicant
668 for:

669 (A) a sales agent license to complete an approved educational program consisting of
670 the number of hours designated by rule made by the commission with the concurrence of the
671 division, except that the rule may not require less than 120 hours; and

672 (B) an associate broker or a principal broker license to complete an approved
673 educational program consisting of the number of hours designated by rule made by the
674 commission with the concurrence of the division, except that the rule may not require less than
675 120 hours.

676 (ii) An hour required by this section means 50 minutes of instruction in each 60
677 minutes.

678 (iii) The maximum number of program hours available to an individual is eight hours

679 per day.

680 (e) The division, with the concurrence of the commission, shall require the applicant to
681 pass an examination approved by the commission covering:

682 (i) the fundamentals of:

683 (A) the English language;

684 (B) arithmetic;

685 (C) bookkeeping; and

686 (D) real estate principles and practices;

687 (ii) this chapter;

688 (iii) the rules established by the commission; and

689 (iv) any other aspect of Utah real estate license law considered appropriate.

690 (f) (i) Three years' full-time experience as a sales agent or its equivalent is required
691 before an applicant may apply for, and secure a principal broker or associate broker license in
692 this state.

693 (ii) The commission shall establish by rule, made in accordance with Title 63G,
694 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
695 accept experience or special education in similar fields of business in lieu of the three years'
696 experience.

697 (2) (a) The division, with the concurrence of the commission, may require an applicant
698 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
699 reputation and competency as set forth by rule.

700 (b) The division shall require an applicant to provide the applicant's Social Security
701 number, which is a private record under Subsection 63G-2-302(1)(~~h~~)(i).

702 (3) (a) An individual who is not a resident of this state may be licensed in this state if
703 the person complies with this chapter.

704 (b) An individual who is not a resident of this state may be licensed as an associate
705 broker or sales agent in this state by:

706 (i) complying with this chapter; and

707 (ii) being employed or engaged as an independent contractor by or on behalf of a
708 principal broker who is licensed in this state, regardless of whether the principal broker is a
709 resident of this state.

710 (4) (a) The division and commission shall treat an application to be relicensed of an
711 applicant whose real estate license is revoked as an original application.

712 (b) In the case of an applicant for a new license as a principal broker or associate
713 broker, the applicant is not entitled to credit for experience gained before the revocation of a
714 real estate license.

715 (5) (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division
716 the authority to:

- 717 (i) review a class or category of applications for initial or renewed licenses;
- 718 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 719 (iii) approve or deny a license application without concurrence by the commission.

720 (b) (i) If the commission delegates to the division the authority to approve or deny an
721 application without concurrence by the commission and the division denies an application for
722 licensure, the applicant who is denied licensure may petition the commission for de novo
723 review of the application.

724 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
725 agency review by the executive director only after the commission has reviewed the division's
726 denial of the applicant's application.

727 Section 7. Section **63A-13-101** is enacted to read:

728 **CHAPTER 13. REVIEW OF EXECUTIVE BRANCH ETHICS COMPLAINTS**

729 **Part 1. General Provisions**

730 **63A-13-101. Title.**

731 (1) This chapter is known as "Review of Executive Branch Ethics Complaints."

732 (2) This part is known as "General Provisions."

733 Section 8. Section **63A-13-102** is enacted to read:

734 **63A-13-102. Definitions.**

735 As used in this chapter:

736 (1) "Commission" means the Independent Executive Branch Ethics Commission,
737 created in Section 63A-13-202.

738 (2) "Complainant" means an individual who files a complaint under Subsection
739 63A-13-402(1)(a).

740 (3) "Executive branch elected official" means:

741 (a) the governor;

742 (b) the lieutenant governor;

743 (c) the state auditor;

744 (d) the state treasurer; or

745 (e) the attorney general.

746 (4) "Improper purpose" includes harassing a respondent, causing unwarranted harm to
747 a respondent's reputation, or causing unnecessary expenditure of public funds.

748 (5) "Respondent" means the executive branch elected official against whom an ethics
749 complaint described in Section 63A-13-402 is filed.

750 (6) "Violation" means a high crime, a misdemeanor, or malfeasance in office.

751 Section 9. Section **63A-13-201** is enacted to read:

752 **Part 2. Independent Executive Branch Ethics Commission**

753 **63A-13-201. Title.**

754 This part is known as "Independent Executive Branch Ethics Commission."

755 Section 10. Section **63A-13-202** is enacted to read:

756 **63A-13-202. Independent Executive Branch Ethics Commission -- Membership.**

757 (1) ~~H~~→ (a) ←~~H~~ There is created the Independent Executive Branch Ethics Commission,
757a consisting

758 of the following five members appointed by the governor, each of whom shall be registered to
759 vote in the state at the time of appointment:

760 ~~H~~→ ~~(a)~~ (i) ←~~H~~ two members who served:

761 ~~H~~→ ~~(i)~~ (A) ←~~H~~ as elected officials in state government no more recently than
761a four years before the
762 day on which the member is appointed; or

763 ~~H~~→ ~~(ii)~~ (B) ←~~H~~ in a management position in the state executive branch no more
763a recently than four
764 years before the day on which the member is appointed;

765 ~~H~~→ ~~(b)~~ (ii) ←~~H~~ one member who:

766 ~~H~~→ ~~(i)~~ (A) ←~~H~~ has served, but no longer actively serves, as a judge of a court
766a in the state; or

767 ~~H~~→ ~~(ii)~~ (B) ←~~H~~ is a licensed attorney in the state and is not, and has not been, a judge; and

768 ~~H~~→ ~~(c)~~ (iii) ←~~H~~ two citizen members.

768a ~~H~~→ (b) **The governor shall make appointments to the commission as follows:**

768b **(i) each executive branch elected official, other than the governor, shall select,**

768c **and provide to the governor, at least two names for potential appointment to one of the**
768d **membership positions described in Subsection (1)(a);**

768e **(ii) the governor shall determine which of the executive branch elected officials**
768f **described in Subsection (1)(b)(i) shall select names for which membership position;**

768g **(iii) the governor shall appoint to the commission one of the names provided by each**
768h **executive branch elected official described in Subsection (1)(b)(i);**

768i **(iv) the governor shall directly appoint the remaining member of the commission; and**

768j **(v) if an executive branch elected official fails to submit names to the governor within**
768k **15 days after the day on which the governor makes the determination described in Subsection**
768l **(1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership**
768m **position.** ←H

769 **(2) A member of the commission may not, during the member's term of office on the**
770 **commission, act or serve as:**

771 **(a) an officeholder as defined in Section 20A-11-101;**

772 (b) an agency head as defined in Section 67-16-3;

773 (c) a lobbyist as defined in Section 36-11-102;

774 (d) a principal as defined in Section 36-11-102; or

775 (e) an employee of the state.

776 (3) (a) Except as provided in Subsection (3)(b), each member of the commission shall
777 serve a four-year term.

778 (b) The governor shall set the first term of two of the members of the commission at
779 two years, so that approximately half of the commission is appointed, or reappointed, every
780 two years.

781 (c) When a vacancy occurs in the commission's membership for any reason, the
782 governor shall appoint a replacement member for the unexpired term of the vacating member,
783 in accordance with Subsection (1).

784 (d) The governor may not appoint a member to serve more than two full terms, whether
785 those terms are two or four years.

786 (e) (i) The governor, or a majority of the commission, may remove a member from the
787 commission only for cause.

788 (ii) The governor may not remove a member from the commission during any period of
789 time when the commission is investigating or considering a complaint alleging an ethics
790 violation against the governor or lieutenant governor.

791 (f) If a commission member determines that the commission member has a conflict of
792 interest in relation to a complaint, the remaining members of the commission shall appoint an
793 individual to serve in that member's place for the purpose of reviewing that complaint.

794 (4) (a) A member of the commission may not receive compensation or benefits for the
795 member's service, but may receive per diem and expenses incurred in the performance of the
796 member's official duties at the rates established by the Division of Finance under Sections
797 63A-3-106 and 63A-3-107.

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

799 (5) (a) The commission members shall convene a meeting annually each January and
800 elect, by majority vote, a chair from among the commission members.

801 (b) An individual may not serve as chair for more than two consecutive years.

802 (6) The commission:

803 (a) is established within the department for budgetary and general administrative
804 purposes only; and

805 (b) is not under the direction or control of the department, the executive director, or
806 any other officer or employee of the department.

807 Section 11. Section **63A-13-203** is enacted to read:

808 **63A-13-203. Independent Executive Branch Ethics Commission -- Meetings --**
809 **Annual summary report -- Staff.**

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

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

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

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

815 (b) A majority vote of a quorum present constitutes the action of the commission.

816 (3) (a) The commission shall prepare an annual summary data report that contains:

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

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

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

820 (iv) a summary description of ethics complaints that formed the basis for a commission
821 finding that an allegation in a complaint has merit; and

822 (v) an accounting of the commission's budget and expenditures.

823 (b) The commission shall submit the summary data report to the Legislative
824 Management Committee before December 1 each year.

825 (c) The summary data report is a public record.

826 (4) (a) The commission may employ staff at a level that is reasonable to assist the
827 commission in performing the commission's duties as established in this chapter.

828 (b) Except as provided in Subsection (4)(c), staff for the commission may not perform
829 services for any other person in state government.

830 (c) A person employed as staff for the commission may be the same person employed
831 as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper
832 protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of
833 interest.

834 (5) Except as expressly otherwise provided in this chapter, all meetings held under this
 835 chapter are closed to the public.

836 Section 12. Section **63A-13-301** is enacted to read:

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

838 **63A-13-301. Title.**

839 This part is known as "General Powers and Procedures."

840 Section 13. Section **63A-13-302** is enacted to read:

841 **63A-13-302. Authority to review complaint -- Grounds for complaint --**

842 **Limitations on filings.**

843 (1) Subject to the requirements of this chapter, the commission may review an ethics
 844 complaint against an executive branch elected official if the complaint alleges that the
 845 executive branch elected official has committed ~~§~~→ [:

846 ~~—— (a) a high crime;~~

847 ~~—— (b) a misdemeanor; or~~

848 ~~—— (c) malfeasance in office] a violation~~ ←~~§~~ .

849 (2) Individuals who file a complaint for an alleged violation shall file the complaint
 850 within two years after the later of:

851 (a) the day on which the action or omission that forms the basis for the alleged
 852 violation occurs or would have been discovered by a reasonable person; or

853 (b) the day on which a plea or conviction that forms the basis for the allegation is
 854 entered.

855 (3) (a) A complaint may not contain an allegation that was previously reviewed by the
 856 commission, unless:

857 (i) the allegation is accompanied by material facts or circumstances supporting the
 858 allegation that were not raised or pled to the commission when the allegation was previously
 859 reviewed; and

860 (ii) the allegation and the general facts and circumstances supporting the allegation
 861 were only reviewed by the commission on one previous occasion.

862 (b) If an allegation in a complaint does not comply with the requirements of Subsection
 863 (3)(a), the commission or the chair shall dismiss the allegation with prejudice.

864 Section 14. Section **63A-13-303** is enacted to read:

865 **63A-13-303. General powers -- Jurisdiction.**

866 (1) The commission has jurisdiction only over an individual who is currently serving as
867 an executive branch elected official.

868 (2) The commission or the chair shall dismiss an ethics complaint if:

869 (a) the respondent resigns from the respondent's position as an executive branch
870 elected official; or

871 (b) the House of Representatives convenes to consider impeachment of the executive
872 branch elected official.

873 (3) (a) The commission may suspend commission proceedings during a period of time
874 when a criminal investigation or prosecution, based in whole or in part on an allegation in the
875 complaint, is pending.

876 (b) The time periods and deadlines described in this chapter are tolled during a
877 suspension described in Subsection (3)(a).

878 (4) The commission does not have jurisdiction over a violation that occurs before
879 March 14, 2013.

880 Section 15. Section **63A-13-401** is enacted to read:

881 **Part 4. Ethics Complaints**

882 **63A-13-401. Title.**

883 This part is known as "Ethics Complaints."

884 Section 16. Section **63A-13-402** is enacted to read:

885 **63A-13-402. Ethics complaints -- Filing -- Form.**

886 (1) (a) The following individuals may file an ethics complaint against an executive
887 branch elected official if the complaint meets the requirements of Section 63A-13-302 and
888 Subsection (1)(b):

889 (i) two or more executive branch elected officials, deputies of elected officials,
890 executive directors of departments in the executive branch, or directors of divisions in the
891 executive branch, if the complaint contains evidence or sworn testimony that:

892 (A) describes the facts and circumstances supporting the alleged violation; and

893 (B) is generally admissible under the Utah Rules of Evidence; or

894 (ii) two or more registered voters who currently reside in Utah and are not individuals
895 described in Subsection (1)(a)(i), if, for each alleged violation pled in the complaint, at least

896 one of those registered voters has actual knowledge of the facts and circumstances supporting
897 the alleged violation.

898 (b) Complainants may file a complaint only against an individual who is serving as an
899 executive branch elected official on the date that the complaint is filed.

900 (2) (a) The lieutenant governor shall post, on the home page of the lieutenant
901 governor's website, a conspicuous and clearly identified link to the name and address of a
902 person authorized to accept a complaint on behalf of the commission.

903 (b) Complainants shall file a complaint with the person described in Subsection (2)(a).

904 (c) An individual may not file a complaint during the 60 calendar days immediately
905 preceding:

906 (i) a regular primary election in which the accused executive branch elected official is a
907 candidate; or

908 (ii) a regular general election in which the accused executive branch elected official is
909 a candidate, unless the accused executive branch elected official is unopposed in the election.

910 (3) The complainants shall ensure that each complaint filed under this rule is in writing
911 and contains the following information:

912 (a) the name and position or title of the respondent;

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

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

916 (i) a reference to any criminal provision that the respondent is alleged to have violated;

917 (ii) a reference to any other provision of law that the respondent is alleged to have
918 violated or failed to comply with;

919 (iii) the name of the complainant or complainants who have actual knowledge of the
920 supporting facts and circumstances; and

921 (iv) the facts and circumstances supporting the allegation, which shall be provided by:

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

923 (B) one or more affidavits, each of which shall comply with the format described in
924 Subsection (4);

925 (d) a list of the witnesses that the complainants desire to call, including for each
926 witness;

- 927 (i) the name, address, and, if available, one or more telephone numbers of the witness;
- 928 (ii) a brief summary of the testimony to be provided by the witness; and
- 929 (iii) a specific description of any documents or evidence the complainants desire the
- 930 witness to produce;
- 931 (e) a statement that each complainant:
- 932 (i) has reviewed the allegations contained in the complaint and the affidavits and
- 933 documents attached to the complaint;
- 934 (ii) believes that the complaint is submitted in good faith and not for any improper
- 935 purpose; and
- 936 (iii) believes the allegations contained in the complaint to be true and accurate; and
- 937 (f) the signature of each complainant.
- 938 (4) An affidavit described in Subsection (3)(c)(iv)(B) shall include:
- 939 (a) the name, address, and telephone number of the affiant;
- 940 (b) a statement that the affiant has actual knowledge of the facts and circumstances
- 941 described in the affidavit;
- 942 (c) the facts and circumstances testified to by the affiant;
- 943 (d) a statement that the affidavit is believed to be true and correct and that false
- 944 statements are subject to penalties for perjury; and
- 945 (e) the signature of the affiant.
- 946 Section 17. Section **63A-13-403** is enacted to read:
- 947 **63A-13-403. Privacy of ethics complaint -- Dismissal -- Contempt.**
- 948 (1) (a) Except as provided in Subsection (2) or (3), a person, including the
- 949 complainant, the respondent, a commission member, or staff to the commission may not
- 950 disclose the existence of a complaint, a response, or any information concerning an alleged
- 951 violation that is the subject of a complaint.
- 952 (b) A person that violates this Subsection (1) may be held in contempt of the
- 953 commission in accordance with Section 63A-13-705.
- 954 (2) The restrictions described in Subsection (1) do not apply to:
- 955 (a) a complaint or response that is publicly released by the commission and referred to
- 956 the Legislature; or
- 957 (b) the respondent's voluntary disclosure that the commission determined that all

958 allegations in a complaint are without merit, after the commission issues an order dismissing
959 the complaint under Section 63A-13-605.

960 (3) Nothing in this section prevents a person from disclosing facts or allegations
961 regarding potential criminal violations to law enforcement authorities.

962 (4) If the existence of an ethics complaint is publicly disclosed by a person, other than
963 the respondent or an agent of the respondent, during the period that the commission is
964 reviewing the complaint, the commission shall summarily dismiss the complaint without
965 prejudice.

966 Section 18. Section **63A-13-501** is enacted to read:

967 **Part 5. Preliminary Action**

968 **63A-13-501. Title.**

969 This part is known as "Preliminary Action."

970 Section 19. Section **63A-13-502** is enacted to read:

971 **63A-13-502. Initial review of ethics complaint -- Notice.**

972 (1) Within five business days after the day on which the commission receives a
973 complaint, the staff of the commission, in consultation with the chair, shall examine the
974 complaint to determine if it is in compliance with Sections 63A-13-302 and 63A-13-402.

975 (2) If the chair determines that the complaint does not comply with Sections
976 63A-13-302 and 63A-13-402, the chair shall:

977 (a) return the complaint to the first complainant named on the complaint with:

978 (i) a description of the reason for the noncompliance; and

979 (ii) a copy of the applicable provisions of law; and

980 (b) without disclosing the identity of the respondent, notify the other members of the
981 commission that a complaint was filed against an executive branch elected official, but that the
982 complaint was returned for noncompliance with the requirements of this chapter.

983 (3) Each member of the commission and the commission's staff shall keep confidential
984 the fact that a complaint was filed and returned until the commission submits the annual
985 summary data report described in Section 63A-13-203.

986 (4) If a complaint is returned for noncompliance with the requirements of this chapter,
987 the complainants may file another complaint if the new complaint independently meets the
988 requirements of Sections 63A-13-302 and 63A-13-402, including any requirements for timely

989 filing.

990 (5) If the chair determines that a complaint complies with the requirements of this
991 chapter, the chair shall:

992 (a) accept the complaint;

993 (b) notify the members of the commission that:

994 (i) a complaint has been filed against an executive branch elected official; and

995 (ii) the chair has accepted the complaint; and

996 (c) within five business days after the day on which the commission receives the
997 complaint, forward the complaint to the respondent via personal delivery or a delivery method
998 that provides verification of receipt, and include with the complaint notice of the respondent's
999 deadline for filing a response to the complaint.

1000 (6) (a) The identity of the respondent and the allegations raised in a complaint are
1001 confidential pending the commission's review of the complaint.

1002 (b) The fact that a complaint was filed is confidential until the commission publicly
1003 discloses the existence of the complaint by:

1004 (i) issuing a finding that an allegation in the complaint has merit; or

1005 (ii) submitting the annual summary data report described in Section 63A-13-203.

1006 Section 20. Section **63A-13-503** is enacted to read:

1007 **63A-13-503. Meeting of the commission for review of complaint -- Procedures.**

1008 (1) No later than 10 days after the day on which a complaint is accepted under Section
1009 63A-13-502, the chair shall:

1010 (a) except as provided in Subsection (2), schedule a commission meeting on a date:

1011 (i) no later than 60 days after the day on which the chair accepts the complaint; and

1012 (ii) no earlier than 40 days after the day on which the chair accepts the complaint;

1013 (b) place the complaint on the agenda for consideration at that meeting;

1014 (c) provide notice of the date, time, and location of the meeting to:

1015 (i) the members of the commission;

1016 (ii) the first complainant named in the complaint; and

1017 (iii) the respondent; and

1018 (d) provide a copy of the complaint to each member of the commission.

1019 (2) The commission may, by majority vote, change the date of the meeting for review

1020 of the complaint in order to accommodate:

1021 (a) a meeting described in Subsection 63A-13-602(2); or

1022 (b) necessary scheduling requirements.

1023 (3) The commission may conduct a vote to change the date of the meeting described in

1024 Subsection (2) by phone or electronic means if the members do not discuss any other matters

1025 relating to the complaint during the communication.

1026 Section 21. Section **63A-13-504** is enacted to read:

1027 **63A-13-504. Response to ethics complaint -- Filing -- Form.**

1028 (1) A respondent shall file a response to a complaint with the commission no later than
1029 20 days after the day on which the respondent receives delivery of the complaint.

1030 (2) A respondent shall ensure that the response is in writing and contains the following
1031 information:

1032 (a) the name, address, and telephone number of the respondent;

1033 (b) for each alleged violation in the complaint:

1034 (i) each affirmative defense asserted in response to the allegation, including a general
1035 description of each affirmative defense and the facts and circumstances supporting the defense,
1036 supported by one or more affidavits, each of which shall comply with the format described in
1037 Subsection (3); and

1038 (ii) the facts and circumstances refuting the allegation, which shall be provided by:

1039 (A) copies of official records or documentary evidence; or

1040 (B) one or more affidavits, each of which shall comply with the format described in
1041 Subsection (3);

1042 (c) a list of the witnesses that the respondent desires to call, including for each witness:

1043 (i) the name, address, and, if available, telephone number of the witness;

1044 (ii) a brief summary of the testimony to be provided by the witness; and

1045 (iii) a specific description of any documents or evidence that the respondent desires the
1046 witness to produce;

1047 (d) a statement that the respondent:

1048 (i) has reviewed the allegations contained in the complaint and the sworn statements
1049 and documents attached to the response; and

1050 (ii) believes the contents of the response to be true and accurate; and

- 1051 (e) the signature of the respondent.
- 1052 (3) An affidavit described in Subsection (2)(b) shall include:
- 1053 (a) the name, address, and telephone number of the affiant;
- 1054 (b) a statement that the affiant has actual knowledge of the facts and circumstances
- 1055 alleged in the affidavit;
- 1056 (c) the facts and circumstances testified to by the affiant;
- 1057 (d) a statement that the affidavit is believed to be true and correct and that false
- 1058 statements are subject to penalties for perjury; and

- 1059 (e) the signature of the affiant.
- 1060 (4) Within five business days after the day on which the commission receives the
- 1061 response, the commission shall provide copies of the response to:

- 1062 (a) each member of the commission; and
- 1063 (b) the first named complainant on the complaint.

1064 Section 22. Section **63A-13-601** is enacted to read:

Part 6. Ethics Proceedings

63A-13-601. Title.

1067 This part is known as "Ethics Proceedings."

1068 Section 23. Section **63A-13-602** is enacted to read:

63A-13-602. Review of ethics complaint by commission.

1070 (1) The scope of the commission's review of a complaint is limited to the alleged

1071 violations stated in the complaint.

1072 (2) Before holding a meeting for review of a complaint, the chair may schedule a

1073 separate meeting of the commission to:

1074 (a) review a complaint, with or without the attendance of the parties, to determine if the

1075 complaint should be dismissed in whole or in part, by means of a majority vote of the

1076 commission, because the complaint pleads facts or circumstances against an executive branch

1077 elected official that have already been reviewed by the commission;

1078 (b) hear motions or arguments from the parties, including hearing motions or

1079 arguments relating to dismissal of a complaint, admission of evidence, or procedures; or

1080 (c) hold a vote of the commission, with or without the attendance of the parties, on

1081 procedural or commission business matters relating to a complaint.

1082 (3) (a) The commission shall comply with the Utah Rules of Evidence except where
1083 the commission determines, by majority vote, that a rule is not compatible with the
1084 requirements of this chapter.

1085 (b) The chair shall make rulings on admissibility of evidence consistent with the
1086 provisions of Section 63A-13-703.

1087 (4) (a) The following individuals may be present during the presentation of testimony
1088 and evidence to the commission:

1089 (i) the complainants, except that no more than three complainants may be present at
1090 one time;

1091 (ii) the complainants' counsel, if applicable;

1092 (iii) the respondent;

1093 (iv) the respondent's counsel, if applicable;

1094 (v) members of the commission;

1095 (vi) staff to the commission;

1096 (vii) a witness, while testifying before the commission; and

1097 (viii) necessary security personnel.

1098 (b) The complainants, respondent, and counsel for a complainant or respondent may be
1099 excluded from a portion of the meeting when the commission discusses administrative,
1100 procedural, legal, or evidentiary issues by:

1101 (i) the order of the chair, subject to override as provided in Section 63A-13-703; or

1102 (ii) a majority vote of the commission.

1103 (c) When the commission deliberates at the conclusion of presentation of testimony
1104 and evidence, the commission shall ensure that those deliberations are closed to all persons
1105 except for the members of the commission and commission staff.

1106 (5) If a majority of the commission determines that a continuance is necessary to obtain
1107 further evidence and testimony, accommodate administrative needs, or accommodate the
1108 attendance of commission members, witnesses, or a party, the commission may:

1109 (a) after notice to the parties, adjourn and continue the meeting to a future date and
1110 time; and

1111 (b) establish that future date and time by majority vote.

1112 Section 24. Section **63A-13-603** is enacted to read:

1113 **63A-13-603. Record -- Recording of meetings.**

1114 (1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or
1115 other recording device in a meeting authorized by this chapter.

1116 (b) The commission shall keep an audio or video recording of all portions of each
1117 meeting authorized by this part.

1118 (c) If the commission elects, by a majority vote, to release in a public meeting the
1119 commission's finding that an allegation in the complaint has merit, the commission may, upon
1120 a majority vote of the commission, open the public meeting to cameras or other recording
1121 devices.

1122 (2) In addition to the recording required in Subsection (1)(b), the chair shall ensure that
1123 a record of the meeting is made, that includes:

1124 (a) official minutes taken during the meeting, if any;

1125 (b) copies of all documents or other items admitted into evidence by the commission;

1126 (c) copies of any documents or written orders or rulings issued by the chair or the
1127 commission; and

1128 (d) any other information that a majority of the commission or the chair directs.

1129 (3) Except for a finding prepared by the commission that is classified as public under
1130 Section 63A-13-605, any recording, testimony, evidence, or other record of a meeting
1131 authorized by this chapter is a private record under Section 63G-2-302 and may not be
1132 disclosed.

1133 Section 25. Section **63A-13-604** is enacted to read:

1134 **63A-13-604. Process for making a decision -- Deliberations.**

1135 (1) (a) After each party presents a closing argument, the commission shall, at the
1136 direction of the chair, begin private deliberations.

1137 (b) The deliberations described in Subsection (1)(a) may be held:

1138 (i) immediately after conclusion of the closing arguments; or

1139 (ii) at a future meeting of the commission, on a date and time determined by a majority
1140 of the members of the commission.

1141 (2) (a) The chair shall conduct the deliberations.

1142 (b) Upon a motion made by a commission member, the commission may exclude
1143 commission staff from all or a portion of the deliberations by a majority vote of the

1144 commission.

1145 (3) (a) During deliberations, for each allegation reviewed by the commission, each
1146 member shall determine and cast a vote stating whether the allegation is:

1147 (i) proved, by clear and convincing evidence, to have merit; or

1148 (ii) not proved to have merit.

1149 (b) A verbal roll call vote shall be taken on each allegation and each member's vote
1150 shall be recorded.

1151 (4) (a) An allegation is determined to not have merit unless four of the five members of
1152 the commission vote that the allegation has merit.

1153 (b) An allegation that is not determined to have merit is dismissed.

1154 (5) (a) Before issuing an order or a finding under Section 63A-13-605, the commission
1155 may, upon a majority vote, reconsider and hold a new vote on an allegation.

1156 (b) A motion to reconsider a vote may only be made by a member of the commission
1157 who voted in favor of the vote to be reconsidered.

1158 (6) At the conclusion of deliberations, the commission shall prepare an order or a
1159 finding in accordance with Section 63A-13-605.

1160 Section 26. Section **63A-13-605** is enacted to read:

1161 **63A-13-605. Order or finding of merit by the commission.**

1162 (1) If the commission determines that all allegations in the complaint are without merit,
1163 the commission shall:

1164 (a) issue and enter into the record an order that the complaint is dismissed because no
1165 allegations in the complaint were found to have merit;

1166 (b) classify all recordings, testimony, evidence, orders, findings, and other records
1167 directly relating to the meetings authorized by this part as private records under Section
1168 63G-2-302;

1169 (c) provide notice of the determination, in a manner determined by a majority vote of
1170 the commission, to:

1171 (i) the respondent; and

1172 (ii) the first complainant named on the complaint; and

1173 (d) provide notice to each person named in Subsection (1)(c) that, under the provisions
1174 of Section 63A-13-403 and other provisions of this chapter, a person who discloses the

1175 findings of the commission in violation of any provision of this chapter is in contempt of the
 1176 commission and is subject to penalties for contempt.

1177 (2) If the commission determines that one or more of the allegations in the complaint
 1178 have merit, the commission shall:

1179 (a) if one or more allegations were not found to have merit, enter into the record an
 1180 order dismissing the allegations that were found not to have merit;

1181 (b) within 30 business days after the day on which the commission makes the
 1182 determination, prepare a written finding, for submission to the Legislature, that:

1183 (i) lists the name of each complainant;

1184 (ii) lists the name of the respondent;

1185 (iii) states the date of the finding;

1186 (iv) for each allegation that was found to ~~be~~ have merit:

1187 (A) describes the high crime, misdemeanor, or malfeasance ~~of~~ in ~~an~~ office allegedly
 1188 committed by the respondent;

1189 (B) states the number and names of commission members who voted that the allegation
 1190 has merit and the number and names of commission members who voted that the allegation
 1191 does not have merit;

1192 (C) subject to Subsection (3), at the option of those members voting that the allegation
 1193 has merit, includes a statement by one or all of those members stating the reasons that the
 1194 members voted that the allegation has merit; and

1195 (D) subject to Subsection (3), at the option of those members who voted that the
 1196 allegation does not have merit, includes a statement by one or all of those members stating the
 1197 reasons that the members voted that the allegation does not have merit;

1198 (v) contains any general statement that is adopted for inclusion in the finding by a
 1199 majority of the members of the commission;

1200 (vi) describes the allegations found by the commission to have merit;

1201 (vii) states the name of each member of the commission; and

1202 (viii) is signed by each member of the commission;

1203 (c) direct staff to publicly release the finding, the complaint, and the response, subject
 1204 to the redaction of any allegations that were dismissed; and

1205 (d) classify all other recordings, testimony, evidence, orders, findings, and other

1206 records directly relating to the meetings authorized by this chapter as private records under
1207 Section 63G-2-302.

1208 (3) A statement described in Subsection (2)(b)(iv)(C) or (D) may not cite specific
1209 evidence, specific testimony, or specific witnesses.

1210 (4) The commission shall ensure that, within five business days after the day on which
1211 the commission finishes preparing the written finding described in Subsection (2)(b):

1212 (a) the complaint and the response are redacted to remove references to the allegations
1213 found by the commission to be without merit;

1214 (b) a copy of the finding is made publicly available and provided to:

1215 (i) the respondent;

1216 (ii) the first complainant named on the complaint;

1217 (iii) the speaker of the House of Representatives;

1218 (iv) the president of the Senate; and

1219 (v) the governor; and

1220 (c) the following documents are made publicly available and are provided to the
1221 speaker of the House of Representatives and the president of the Senate:

1222 (i) a cover letter generally describing the allegations in the edited complaint that are
1223 found by the commission to have merit;

1224 (ii) a copy of the edited complaint;

1225 (iii) a copy of the edited response; and

1226 (iv) a copy of the finding.

1227 Section 27. Section **63A-13-606** is enacted to read:

1228 **63A-13-606. Comments on complaint under review by Legislature.**

1229 (1) Except as provided in Subsection (2), while a complaint is under review by the
1230 Legislature, a member of the commission may not comment publicly or privately about the
1231 commission's decision, reasoning, or other matters relating to the ethics complaint, but may
1232 provide or refer a questioner to the commission's written finding.

1233 (2) Subsection (1) does not prohibit statements made:

1234 (a) to an individual authorized by the Legislature to conduct an investigation for the
1235 purpose of assisting the Legislature in conducting proceedings related to impeachment or
1236 removal from office;

1237 (b) to a legislative committee, the House, or the Senate in relation to proceedings for
1238 impeachment or trial of impeachment; or

1239 (c) as part of a criminal investigation.

1240 Section 28. Section **63A-13-701** is enacted to read:

1241 **Part 7. General Provisions Governing Hearings on Ethics Complaints**

1242 **63A-13-701. Title.**

1243 This part is known as "General Provisions Governing Hearings on Ethics Complaints."

1244 Section 29. Section **63A-13-702** is enacted to read:

1245 **63A-13-702. General procedures for conducting a hearing on an ethics complaint.**

1246 (1) In conducting a hearing on a complaint, the commission shall comply with the
1247 following process in the order specified:

1248 (a) introduction and instructions for procedure and process, at the discretion of the
1249 chair;

1250 (b) procedural motions, adoption of evidentiary standards, or other general matters;

1251 (c) complainants' opening argument, to be presented by a complainant or complainants'
1252 counsel;

1253 (d) complainants' presentation of evidence and witnesses in support of allegations in
1254 the complaint;

1255 (e) consideration of motions to dismiss the complaint or motions for a directed verdict,
1256 as applicable;

1257 (f) respondent's opening argument, to be presented by the respondent or respondent's
1258 counsel;

1259 (g) respondent's presentation of evidence and witnesses refuting the allegations in the
1260 complaint;

1261 (h) presentation of rebuttal evidence and witnesses by the complainants, at the
1262 discretion of the chair;

1263 (i) presentation of rebuttal evidence and witnesses by the respondent, at the discretion
1264 of the chair;

1265 (j) complainants' closing argument, to be presented by a complainant or complainants'
1266 counsel;

1267 (k) respondent's closing argument, to be presented by the respondent or respondent's

1268 counsel;

1269 (l) deliberations by the commission; and

1270 (m) adoption of the commission's findings.

1271 (2) The commission may, in extraordinary circumstances, and consistent with due
1272 process considerations, vary the order described in Subsection (1) by majority vote and by
1273 providing notice to the parties.

1274 (3) In addition to witnesses or evidence subpoenaed at the request of a complainant or
1275 a respondent, the chair or the commission may, consistent with due process considerations,
1276 subpoena and schedule the examination of witnesses or evidence that the chair or the
1277 commission determines will assist the commission in making a determination on the merits of
1278 the complaint.

1279 Section 30. Section **63A-13-703** is enacted to read:

1280 **63A-13-703. Chair as presiding judge.**

1281 (1) Except as expressly provided otherwise in this chapter, the chair is vested with the
1282 power to direct the commission during meetings authorized by this chapter.

1283 (2) Except as otherwise provided in this chapter, the commission may overrule a
1284 decision of the chair if:

1285 (a) a member of the commission:

1286 (i) states that the member desires to overrule the decision of the chair; and

1287 (ii) states the basis for the member's objection to the decision of the chair; and

1288 (b) a majority of the commission votes to overrule the decision of the chair.

1289 (3) The chair may set time limitations on any part of a meeting authorized by this
1290 chapter.

1291 Section 31. Section **63A-13-704** is enacted to read:

1292 **63A-13-704. Subpoena powers.**

1293 (1) For all proceedings authorized by this chapter, the commission may issue a
1294 subpoena to:

1295 (a) require the attendance of a witness; or

1296 (b) direct the production of evidence.

1297 (2) The commission shall issue a subpoena under this section:

1298 (a) as required under Section 63A-13-706;

1299 (b) at the direction of the chair, if the chair determines that the testimony or evidence is
1300 relevant to the review of a complaint; or

1301 (c) upon a vote of a majority of the commission members.

1302 Section 32. Section **63A-13-705** is enacted to read:

1303 **63A-13-705. Contempt of the commission -- Enforcement.**

1304 (1) Except as provided in Subsection (9), the following actions constitute contempt of
1305 the commission:

1306 (a) disobedience to a direction of the commission or the chair in relation to actions and
1307 proceedings under this chapter;

1308 (b) failure to answer a question during a commission meeting when directed to answer
1309 a question by:

1310 (i) the chair, unless the direction is overridden by the commission under Section
1311 63A-13-703; or

1312 (ii) a majority of the members of the commission;

1313 (c) failure to comply with a subpoena or other order issued under the authority of this
1314 chapter;

1315 (d) violation of the provisions of Subsection 63A-13-403(1);

1316 (e) violation of the communication provisions described in Section 63A-13-707;

1317 (f) violation of a request to comply with a provision of this chapter by the chair or a
1318 majority of the members of the commission; or

1319 (g) any other ground that is specified in statute or recognized at common law.

1320 (2) The following persons may authorize an enforcement action against a person in
1321 contempt of the commission under the provisions of this chapter:

1322 (a) the chair, subject to the provisions of Section 63A-13-703; or

1323 (b) a majority of the members of the commission;

1324 (3) If a person that is the subject of a subpoena issued under this chapter fails to
1325 comply with the subpoena, refuses to testify to a matter upon which the person may be lawfully
1326 interrogated, or is otherwise in contempt of the commission, the commission or the chair may:

1327 (a) file in district court a motion for an order to compel obedience to a subpoena or a
1328 lawful order of the commission or the chair;

1329 (b) file in district court a motion for an order to show cause why the penalties

1330 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
1331 for contempt of the commission; or

1332 (c) pursue other remedies against a person in contempt of the commission.

1333 (4) The court shall expedite the hearing and decision on a motion described in

1334 Subsection (3).

1335 (5) A court may:

1336 (a) order the person named in the subpoena, or subject to an order, to comply with the
1337 subpoena or order; or

1338 (b) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
1339 the person named in the subpoena, subject to the order, or otherwise held in contempt of the
1340 commission.

1341 (6) (a) If a subpoena issued under this chapter requires the production of accounts,
1342 books, papers, documents, or other tangible items, the person to whom the subpoena is directed
1343 may petition a district court to quash or modify the subpoena at or before the time specified in
1344 the subpoena for compliance.

1345 (b) The commission or the chair may respond to a motion to quash or modify a
1346 subpoena by taking an action described in Subsection (3).

1347 (c) If the court finds that a subpoena requiring the production of accounts, books,
1348 papers, documents, or other tangible items is unreasonable or oppressive, the court may quash
1349 or modify the subpoena.

1350 (7) Nothing in this section prevents the commission or the chair from seeking an
1351 extraordinary writ to remedy contempt of the commission.

1352 (8) A party aggrieved by a decision of a court under this section may appeal that action
1353 directly to the Utah Supreme Court.

1354 (9) An individual is not in contempt of the commission if the person's disobedience or
1355 failure to comply with a provision of Subsection (1) is due to a valid invocation of the person's
1356 Fifth Amendment right against self-incrimination.

1357 Section 33. Section **63A-13-706** is enacted to read:

1358 **63A-13-706. Testimony and examination of witnesses -- Oath -- Procedure --**
1359 **Contempt.**

1360 (1) The chair shall ensure that each witness listed in a complaint and response is

1361 subpoenaed for appearance at the hearing unless:

1362 (a) the witness is unable to be properly identified or located; or

1363 (b) service is otherwise determined to be impracticable.

1364 (2) The chair shall determine the scheduling and order of witnesses and presentation of
 1365 evidence.

1366 (3) The commission may, by majority vote:

1367 (a) overrule the chair's decision not to subpoena a witness under Subsection (1);

1368 (b) modify the chair's determination on the scheduling and order of witnesses, and the
 1369 presentation of evidence, under Subsection (2);

1370 (c) decline to hear or call a witness ~~§~~→ [that] who ←~~§~~ is requested by a complainant or a
 1370a respondent;

1371 (d) decline to review or consider evidence submitted in relation to an ethics complaint;

1372 or

1373 (e) request and subpoena witnesses or evidence according to the procedures of Section
 1374 63A-13-704.

1375 (4) (a) Each witness shall testify under oath.

1376 (b) The chair or the chair's designee shall administer the oath to each witness.

1377 (5) After the oath is administered to a witness, the chair shall direct testimony as
 1378 follows:

1379 (a) allow the party that called the witness, or that party's counsel, to question the
 1380 witness;

1381 (b) allow the opposing party, or the opposing party's counsel, to cross-examine the
 1382 witness;

1383 (c) allow additional questioning by a party or a party's counsel as appropriate;

1384 (d) give commission members the opportunity to question the witness; and

1385 (e) as appropriate, allow further examination of the witness by the commission, or the
 1386 parties or their counsel.

1387 (6) (a) If a witness, a party, or a party's counsel objects to a question, the chair shall:

1388 (i) direct the witness to answer; or

1389 (ii) rule that the witness is not required to answer the question.

1390 (b) If a witness declines to answer a question after the chair or a majority of the
 1391 commission determines that the witness is required to answer the question, the witness may be

1392 held in contempt in accordance with the provisions of Section 63A-13-705.

1393 (7) (a) The chair or a majority of the members of the commission may direct a witness
1394 to furnish any relevant evidence for consideration if the witness brings the material voluntarily
1395 or was required to bring the material by subpoena.

1396 (b) If a witness declines to provide evidence in response to a subpoena, the witness
1397 may be held in contempt under Section 63A-13-705.

1398 Section 34. Section **63A-13-707** is enacted to read:

1399 **63A-13-707. Communications of commission members.**

1400 (1) As used in this section, "third party" means a person who is not a member of the
1401 commission or staff to the commission.

1402 (2) While a complaint is under review by the commission, a member of the
1403 commission may not initiate, engage in, or consider any communications concerning the
1404 complaint with a third party unless:

1405 (a) the communication is expressly permitted under the procedures established by this
1406 chapter; or

1407 (b) the communication is made by the third party, in writing, simultaneously to:

1408 (i) all members of the commission; and

1409 (ii) a staff member of the commission.

1410 (3) While the commission is reviewing a complaint under this chapter, a commission
1411 member may communicate outside of the meetings or deliberations with another member of, or
1412 staff to, the commission, if the member's communication does not materially compromise the
1413 member's responsibility to independently review and make decisions in relation to the
1414 complaint.

1415 Section 35. Section **63A-13-708** is enacted to read:

1416 **63A-13-708. Attorney fees and costs.**

1417 (1) A complainant:

1418 (a) may, but is not required to, retain legal representation during the complaint review
1419 process; and

1420 (b) is responsible for payment of the complainant's attorney fees and costs incurred.

1421 (2) A respondent:

1422 (a) may, but is not required to, retain legal representation during the complaint review

1423 process; and

1424 (b) is responsible for payment of the respondent's attorney fees and costs incurred.

1425 (3) An attorney who participates in a hearing before the commission shall comply with:

1426 (a) the Rules of Professional Conduct established by the Utah Supreme Court;

1427 (b) the procedures and requirements of this chapter; and

1428 (c) the directions of the chair and the commission.

1429 (4) A violation of Subsection (3) may constitute:

1430 (a) contempt of the commission under Section 63A-13-705; or

1431 (b) a violation of the Rules of Professional Conduct, subject to enforcement by the

1432 Utah State Bar.

1433 Section 36. Section **63G-2-202** is amended to read:

1434 **63G-2-202. Access to private, controlled, and protected documents.**

1435 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity
1436 shall disclose a private record to:

1437 (a) the subject of the record;

1438 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
1439 record;

1440 (c) the legal guardian of a legally incapacitated individual who is the subject of the
1441 record;

1442 (d) any other individual who:

1443 (i) has a power of attorney from the subject of the record;

1444 (ii) submits a notarized release from the subject of the record or the individual's legal
1445 representative dated no more than 90 days before the date the request is made; or

1446 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
1447 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
1448 the record is consistent with normal professional practice and medical ethics; or

1449 (e) any person to whom the record must be provided pursuant to:

1450 (i) court order as provided in Subsection (7); or

1451 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
1452 Powers.

1453 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

1454 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
1455 a government public health agency upon submission of:

1456 (A) a release from the subject of the record that is dated no more than 90 days prior to
1457 the date the request is made; and

1458 (B) a signed acknowledgment of the terms of disclosure of controlled information as
1459 provided by Subsection (2)(b); and

1460 (ii) any person to whom the record must be disclosed pursuant to:

1461 (A) a court order as provided in Subsection (7); or

1462 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
1463 Powers.

1464 (b) A person who receives a record from a governmental entity in accordance with
1465 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
1466 including the subject of the record.

1467 (3) If there is more than one subject of a private or controlled record, the portion of the
1468 record that pertains to another subject shall be segregated from the portion that the requester is
1469 entitled to inspect.

1470 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
1471 entity shall disclose a protected record to:

1472 (a) the person who submitted the record;

1473 (b) any other individual who:

1474 (i) has a power of attorney from all persons, governmental entities, or political
1475 subdivisions whose interests were sought to be protected by the protected classification; or

1476 (ii) submits a notarized release from all persons, governmental entities, or political
1477 subdivisions whose interests were sought to be protected by the protected classification or from
1478 their legal representatives dated no more than 90 days prior to the date the request is made;

1479 (c) any person to whom the record must be provided pursuant to:

1480 (i) a court order as provided in Subsection (7); or

1481 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
1482 Powers; or

1483 (d) the owner of a mobile home park, subject to the conditions of Subsection
1484 41-1a-116(5).

1485 (5) A governmental entity may disclose a private, controlled, or protected record to
1486 another governmental entity, political subdivision, another state, the United States, or a foreign
1487 government only as provided by Section 63G-2-206.

1488 (6) Before releasing a private, controlled, or protected record, the governmental entity
1489 shall obtain evidence of the requester's identity.

1490 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
1491 signed by a judge from a court of competent jurisdiction, provided that:

1492 (a) the record deals with a matter in controversy over which the court has jurisdiction;

1493 (b) the court has considered the merits of the request for access to the record;

1494 (c) the court has considered and, where appropriate, limited the requester's use and
1495 further disclosure of the record in order to protect:

1496 (i) privacy interests in the case of private or controlled records;

1497 (ii) business confidentiality interests in the case of records protected under Subsection
1498 63G-2-305(1), (2), (39)(a)(ii), or (39)(a)(vi); and

1499 (iii) privacy interests or the public interest in the case of other protected records;

1500 (d) to the extent the record is properly classified private, controlled, or protected, the
1501 interests favoring access, considering limitations thereon, are greater than or equal to the
1502 interests favoring restriction of access; and

1503 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
1504 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

1505 (8) (a) A governmental entity may disclose or authorize disclosure of private or
1506 controlled records for research purposes if the governmental entity:

1507 (i) determines that the research purpose cannot reasonably be accomplished without
1508 use or disclosure of the information to the researcher in individually identifiable form;

1509 (ii) determines that:

1510 (A) the proposed research is bona fide; and

1511 (B) the value of the research is greater than or equal to the infringement upon personal
1512 privacy;

1513 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
1514 the records; and

1515 (B) requires the removal or destruction of the individual identifiers associated with the

1516 records as soon as the purpose of the research project has been accomplished;

1517 (iv) prohibits the researcher from:

1518 (A) disclosing the record in individually identifiable form, except as provided in
1519 Subsection (8)(b); or

1520 (B) using the record for purposes other than the research approved by the governmental
1521 entity; and

1522 (v) secures from the researcher a written statement of the researcher's understanding of
1523 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
1524 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
1525 under Section 63G-2-801.

1526 (b) A researcher may disclose a record in individually identifiable form if the record is
1527 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
1528 or disclosure of the record in individually identifiable form will be made by the auditor or
1529 evaluator except as provided by this section.

1530 (c) A governmental entity may require indemnification as a condition of permitting
1531 research under this Subsection (8).

1532 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
1533 may disclose to persons other than those specified in this section records that are:

1534 (i) private under Section 63G-2-302; or

1535 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
1536 business confidentiality has been made under Section 63G-2-309.

1537 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the
1538 disclosure to persons other than those specified in this section of records that are:

1539 (i) private under Section 63G-2-302;

1540 (ii) controlled under Section 63G-2-304; or

1541 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
1542 business confidentiality has been made under Section 63G-2-309.

1543 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records
1544 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected
1545 under Section 63G-2-305 to persons other than those specified in this section.

1546 (10) A record contained in the Management Information System, created in Section

1547 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
1548 disclosed to any person except the person who is alleged in the report to be a perpetrator of
1549 abuse, neglect, or dependency.

1550 (11) (a) A private record described in Subsection 63G-2-302(2)[~~(f)~~](g) may only be
1551 disclosed as provided in Subsection (1)(e).

1552 (b) A protected record described in Subsection 63G-2-305(42) may only be disclosed
1553 as provided in Subsection (4)(c) or Section 62A-3-312.

1554 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
1555 shall be disclosed as required under:

1556 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

1557 (ii) Subsections 62A-16-302(1) and (6).

1558 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,
1559 protected, or controlled.

1560 Section 37. Section **63G-2-301** is amended to read:

1561 **63G-2-301. Records that must be disclosed.**

1562 (1) As used in this section:

1563 (a) "Business address" means a single address of a governmental agency designated for
1564 the public to contact an employee or officer of the governmental agency.

1565 (b) "Business email address" means a single email address of a governmental agency
1566 designated for the public to contact an employee or officer of the governmental agency.

1567 (c) "Business telephone number" means a single telephone number of a governmental
1568 agency designated for the public to contact an employee or officer of the governmental agency.

1569 (2) The following records are public except to the extent they contain information
1570 expressly permitted to be treated confidentially under the provisions of Subsections
1571 63G-2-201(3)(b) and (6)(a):

1572 (a) laws;

1573 (b) the name, gender, gross compensation, job title, job description, business address,
1574 business email address, business telephone number, number of hours worked per pay period,
1575 dates of employment, and relevant education, previous employment, and similar job
1576 qualifications of a current or former employee or officer of the governmental entity, excluding:

1577 (i) undercover law enforcement personnel; and

1578 (ii) investigative personnel if disclosure could reasonably be expected to impair the
1579 effectiveness of investigations or endanger any individual's safety;

1580 (c) final opinions, including concurring and dissenting opinions, and orders that are
1581 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except
1582 that if the proceedings were properly closed to the public, the opinion and order may be
1583 withheld to the extent that they contain information that is private, controlled, or protected;

1584 (d) final interpretations of statutes or rules by a governmental entity unless classified as
1585 protected as provided in Subsection 63G-2-305(16) or (17);

1586 (e) information contained in or compiled from a transcript, minutes, or report of the
1587 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open
1588 and Public Meetings Act, including the records of all votes of each member of the
1589 governmental entity;

1590 (f) judicial records unless a court orders the records to be restricted under the rules of
1591 civil or criminal procedure or unless the records are private under this chapter;

1592 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of
1593 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
1594 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
1595 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
1596 other governmental entities that give public notice of:

1597 (i) titles or encumbrances to real property;

1598 (ii) restrictions on the use of real property;

1599 (iii) the capacity of persons to take or convey title to real property; or

1600 (iv) tax status for real and personal property;

1601 (h) records of the Department of Commerce that evidence incorporations, mergers,
1602 name changes, and uniform commercial code filings;

1603 (i) data on individuals that would otherwise be private under this chapter if the
1604 individual who is the subject of the record has given the governmental entity written
1605 permission to make the records available to the public;

1606 (j) documentation of the compensation that a governmental entity pays to a contractor
1607 or private provider;

1608 (k) summary data;

1609 (l) voter registration records, including an individual's voting history, except for those
1610 parts of the record that are classified as private in Subsection 63G-2-302(1)(~~+~~)(j);

1611 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
1612 available, and email address, if available, where that elected official may be reached as required
1613 in Title 11, Chapter 47, Access to Elected Officials;

1614 (n) for a school community council member, a telephone number, if available, and
1615 email address, if available, where that elected official may be reached directly as required in
1616 Section 53A-1a-108; and

1617 (o) annual audited financial statements of the Utah Educational Savings Plan described
1618 in Section 53B-8a-111.

1619 (3) The following records are normally public, but to the extent that a record is
1620 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
1621 Section 63G-2-302, 63G-2-304, or 63G-2-305:

1622 (a) administrative staff manuals, instructions to staff, and statements of policy;

1623 (b) records documenting a contractor's or private provider's compliance with the terms
1624 of a contract with a governmental entity;

1625 (c) records documenting the services provided by a contractor or a private provider to
1626 the extent the records would be public if prepared by the governmental entity;

1627 (d) contracts entered into by a governmental entity;

1628 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
1629 by a governmental entity;

1630 (f) records relating to government assistance or incentives publicly disclosed,
1631 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
1632 business in Utah, except as provided in Subsection 63G-2-305(34);

1633 (g) chronological logs and initial contact reports;

1634 (h) correspondence by and with a governmental entity in which the governmental entity
1635 determines or states an opinion upon the rights of the state, a political subdivision, the public,
1636 or any person;

1637 (i) empirical data contained in drafts if:

1638 (i) the empirical data is not reasonably available to the requester elsewhere in similar
1639 form; and

1640 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
1641 make nonsubstantive changes before release;

1642 (j) drafts that are circulated to anyone other than:

1643 (i) a governmental entity;

1644 (ii) a political subdivision;

1645 (iii) a federal agency if the governmental entity and the federal agency are jointly
1646 responsible for implementation of a program or project that has been legislatively approved;

1647 (iv) a government-managed corporation; or

1648 (v) a contractor or private provider;

1649 (k) drafts that have never been finalized but were relied upon by the governmental
1650 entity in carrying out action or policy;

1651 (l) original data in a computer program if the governmental entity chooses not to
1652 disclose the program;

1653 (m) arrest warrants after issuance, except that, for good cause, a court may order
1654 restricted access to arrest warrants prior to service;

1655 (n) search warrants after execution and filing of the return, except that a court, for good
1656 cause, may order restricted access to search warrants prior to trial;

1657 (o) records that would disclose information relating to formal charges or disciplinary
1658 actions against a past or present governmental entity employee if:

1659 (i) the disciplinary action has been completed and all time periods for administrative
1660 appeal have expired; and

1661 (ii) the charges on which the disciplinary action was based were sustained;

1662 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School
1663 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that
1664 evidence mineral production on government lands;

1665 (q) final audit reports;

1666 (r) occupational and professional licenses;

1667 (s) business licenses; and

1668 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
1669 records used to initiate proceedings for discipline or sanctions against persons regulated by a
1670 governmental entity, but not including records that initiate employee discipline.

1671 (4) The list of public records in this section is not exhaustive and should not be used to
1672 limit access to records.

1673 Section 38. Section **63G-2-302** is amended to read:

1674 **63G-2-302. Private records.**

1675 (1) The following records are private:

1676 (a) records concerning an individual's eligibility for unemployment insurance benefits,
1677 social services, welfare benefits, or the determination of benefit levels;

1678 (b) records containing data on individuals describing medical history, diagnosis,
1679 condition, treatment, evaluation, or similar medical data;

1680 (c) records of publicly funded libraries that when examined alone or with other records
1681 identify a patron;

1682 (d) records received by or generated by or for:

1683 (i) the Independent Legislative Ethics Commission, except for:

1684 (A) the commission's summary data report that is required under legislative rule; and

1685 (B) any other document that is classified as public under legislative rule; or

1686 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
1687 unless the record is classified as public under legislative rule;

1688 (e) records received by, or generated by or for, the Independent Executive Branch

1689 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 13, Review
1690 of Executive Branch Ethics Complaints;

1691 [~~(e)~~] (f) records received or generated for a Senate confirmation committee concerning
1692 character, professional competence, or physical or mental health of an individual:

1693 (i) if prior to the meeting, the chair of the committee determines release of the records:

1694 (A) reasonably could be expected to interfere with the investigation undertaken by the
1695 committee; or

1696 (B) would create a danger of depriving a person of a right to a fair proceeding or
1697 impartial hearing; and

1698 (ii) after the meeting, if the meeting was closed to the public;

1699 [~~(f)~~] (g) employment records concerning a current or former employee of, or applicant
1700 for employment with, a governmental entity that would disclose that individual's home address,
1701 home telephone number, Social Security number, insurance coverage, marital status, or payroll

1702 deductions;

1703 ~~[(g)]~~ (h) records or parts of records under Section 63G-2-303 that a current or former
1704 employee identifies as private according to the requirements of that section;

1705 ~~[(h)]~~ (i) that part of a record indicating a person's Social Security number or federal
1706 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
1707 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

1708 ~~[(i)]~~ (j) that part of a voter registration record identifying a voter's:

1709 (i) driver license or identification card number;

1710 (ii) Social Security number, or last four digits of the Social Security number; or

1711 (iii) email address;

1712 ~~[(j)]~~ (k) a record that:

1713 (i) contains information about an individual;

1714 (ii) is voluntarily provided by the individual; and

1715 (iii) goes into an electronic database that:

1716 (A) is designated by and administered under the authority of the Chief Information
1717 Officer; and

1718 (B) acts as a repository of information about the individual that can be electronically
1719 retrieved and used to facilitate the individual's online interaction with a state agency;

1720 ~~[(k)]~~ (l) information provided to the Commissioner of Insurance under:

1721 (i) Subsection 31A-23a-115(2)(a);

1722 (ii) Subsection 31A-23a-302(3); or

1723 (iii) Subsection 31A-26-210(3);

1724 ~~[(l)]~~ (m) information obtained through a criminal background check under Title 11,
1725 Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

1726 ~~[(m)]~~ (n) information provided by an offender that is:

1727 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
1728 Offender Registry; and

1729 (ii) not required to be made available to the public under Subsection 77-41-110(4);

1730 ~~[(n)]~~ (o) a statement and any supporting documentation filed with the attorney general
1731 in accordance with Section 34-45-107, if the federal law or action supporting the filing
1732 involves homeland security;

1733 ~~[(p)]~~ (p) electronic toll collection customer account information received or collected
1734 under Section 72-6-118, including contact and payment information and customer travel data;

1735 ~~[(q)]~~ (q) an email address provided by a military or overseas voter under Section
1736 20A-16-501;

1737 ~~[(r)]~~ (r) a completed military-overseas ballot that is electronically transmitted under
1738 Title 20A, Chapter 16, Uniform Military and Overseas Voters Act; and

1739 ~~[(s)]~~ (s) records received by or generated by or for the Political Subdivisions Ethics
1740 Review Commission established in Section 11-49-201, except for:

1741 (i) the commission's summary data report that is required in Section 11-49-202; and

1742 (ii) any other document that is classified as public in accordance with Title 11, Chapter
1743 49, Political Subdivisions Ethics Review Commission.

1744 (2) The following records are private if properly classified by a governmental entity:

1745 (a) records concerning a current or former employee of, or applicant for employment
1746 with a governmental entity, including performance evaluations and personal status information
1747 such as race, religion, or disabilities, but not including records that are public under Subsection
1748 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

1749 (b) records describing an individual's finances, except that the following are public:

1750 (i) records described in Subsection 63G-2-301(2);

1751 (ii) information provided to the governmental entity for the purpose of complying with
1752 a financial assurance requirement; or

1753 (iii) records that must be disclosed in accordance with another statute;

1754 (c) records of independent state agencies if the disclosure of those records would
1755 conflict with the fiduciary obligations of the agency;

1756 (d) other records containing data on individuals the disclosure of which constitutes a
1757 clearly unwarranted invasion of personal privacy;

1758 (e) records provided by the United States or by a government entity outside the state
1759 that are given with the requirement that the records be managed as private records, if the
1760 providing entity states in writing that the record would not be subject to public disclosure if
1761 retained by it; and

1762 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
1763 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a

1764 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

1765 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
1766 records, statements, history, diagnosis, condition, treatment, and evaluation.

1767 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
1768 doctors, or affiliated entities are not private records or controlled records under Section
1769 63G-2-304 when the records are sought:

1770 (i) in connection with any legal or administrative proceeding in which the patient's
1771 physical, mental, or emotional condition is an element of any claim or defense; or

1772 (ii) after a patient's death, in any legal or administrative proceeding in which any party
1773 relies upon the condition as an element of the claim or defense.

1774 (c) Medical records are subject to production in a legal or administrative proceeding
1775 according to state or federal statutes or rules of procedure and evidence as if the medical
1776 records were in the possession of a nongovernmental medical care provider.

1777 Section 39. Section **63G-2-303** is amended to read:

1778 **63G-2-303. Private information concerning certain government employees.**

1779 (1) As used in this section:

1780 (a) "At-risk government employee" means a current or former:

1781 (i) peace officer as specified in Section 53-13-102;

1782 (ii) supreme court justice;

1783 (iii) judge of an appellate, district, or juvenile court, or a court commissioner;

1784 (iv) justice court judge;

1785 (v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

1786 (vi) federal judge;

1787 (vii) federal magistrate judge;

1788 (viii) judge authorized by Armed Forces, Title 10, United States Code;

1789 (ix) United States Attorney;

1790 (x) Assistant United States Attorney;

1791 (xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

1792 (xii) a law enforcement official as defined in Section 53-5-711; or

1793 (xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

1794 (b) "Family member" means the spouse, child, sibling, parent, or grandparent of an

1795 at-risk government employee who is living with the employee.

1796 (2) (a) Pursuant to Subsection 63G-2-302(1)(~~g~~)(h), an at-risk government employee
1797 may file a written application that:

1798 (i) gives notice of the employee's status to each agency of a government entity holding
1799 a record or a part of a record that would disclose the employee's or the employee's family
1800 member's home address, home telephone number, Social Security number, insurance coverage,
1801 marital status, or payroll deductions; and

1802 (ii) requests that the government agency classify those records or parts of records
1803 private.

1804 (b) An at-risk government employee desiring to file an application under this section
1805 may request assistance from the government agency to identify the individual records
1806 containing the private information specified in Subsection (2)(a)(i).

1807 (c) Each government agency shall develop a form that:

1808 (i) requires the at-risk government employee to provide evidence of qualifying
1809 employment;

1810 (ii) requires the at-risk government employee to designate each specific record or part
1811 of a record containing the employee's home address, home telephone number, Social Security
1812 number, insurance coverage, marital status, or payroll deductions that the applicant desires to
1813 be classified as private; and

1814 (iii) affirmatively requests that the government entity holding those records classify
1815 them as private.

1816 (3) A county recorder, county treasurer, county auditor, or a county tax assessor may
1817 fully satisfy the requirements of this section by:

1818 (a) providing a method for the assessment roll and index and the tax roll and index that
1819 will block public access to the home address, home telephone number, situs address, and Social
1820 Security number; and

1821 (b) providing the at-risk government employee requesting the classification with a
1822 disclaimer informing the employee that the employee may not receive official announcements
1823 affecting the employee's property, including notices about proposed annexations,
1824 incorporations, or zoning modifications.

1825 (4) A government agency holding records of an at-risk government employee classified

1826 as private under this section may release the record or part of the record if:

1827 (a) the employee or former employee gives written consent;

1828 (b) a court orders release of the records; or

1829 (c) the government agency receives a certified death certificate for the employee or
1830 former employee.

1831 (5) (a) If the government agency holding the private record receives a subpoena for the
1832 records, the government agency shall attempt to notify the at-risk government employee or
1833 former employee by mailing a copy of the subpoena to the employee's last-known mailing
1834 address together with a request that the employee either:

1835 (i) authorize release of the record; or

1836 (ii) within 10 days of the date that the copy and request are mailed, deliver to the
1837 government agency holding the private record a copy of a motion to quash filed with the court
1838 who issued the subpoena.

1839 (b) The government agency shall comply with the subpoena if the government agency
1840 has:

1841 (i) received permission from the at-risk government employee or former employee to
1842 comply with the subpoena;

1843 (ii) not received a copy of a motion to quash within 10 days of the date that the copy of
1844 the subpoena was mailed; or

1845 (iii) received a court order requiring release of the records.

1846 Section 40. Section **63G-2-803** is amended to read:

1847 **63G-2-803. No individual liability for certain decisions of a governmental entity.**

1848 (1) Neither the governmental entity, nor any officer or employee of the governmental
1849 entity, is liable for damages resulting from the release of a record where the person or
1850 government requesting the record presented evidence of authority to obtain the record even if it
1851 is subsequently determined that the requester had no authority.

1852 (2) Neither the governmental entity, nor any officer or employee of the governmental
1853 entity, is liable for damages arising from the negligent disclosure of records classified as
1854 private under Subsection 63G-2-302(1)~~(f)~~(g) unless:

1855 (a) the disclosure was of employment records maintained by the governmental entity;

1856 or

1857 (b) the current or former government employee had previously filed the notice required
1858 by Section 63G-2-303 and:

1859 (i) the government entity did not take reasonable steps to preclude access or
1860 distribution of the record; or

1861 (ii) the release of the record was otherwise willfully or grossly negligent.

1862 (3) A mailing from a government agency to an individual who has filed an application
1863 under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A,
1864 Chapter 12, Archives and Records Service.

Legislative Review Note
as of 2-22-13 2:28 PM

Office of Legislative Research and General Counsel