

STUDENT CIVIL LIBERTIES PROTECTION ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: Howard A. Stephenson

LONG TITLE

Committee Note:

The Administrative Rules Review Committee recommended this bill.

General Description:

This bill creates the Student Civil Liberties Protection Act and amends the Utah Administrative Rulemaking Act.

Highlighted Provisions:

This bill:

- ▶ requires a state institution of higher education to initiate rulemaking proceedings for a policy under certain circumstances;
- ▶ requires each state institution of higher education to:
 - review each current policy for direct effects on the civil liberties of students; and
 - repeal or initiate rulemaking proceedings for each policy that directly affects a student's civil liberty;
- ▶ permits a student at a state institution of higher education to submit a complaint about a school policy to the State Board of Regents;
- ▶ requires the State Board of Regents to:
 - establish a complaint process; and
 - report annually to the Administrative Rules Review Committee;
- ▶ amends the Utah Administrative Rulemaking Act; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63G-3-201**, as last amended by Laws of Utah 2017, Chapter 181

35 ENACTS:

36 **53B-27-301**, Utah Code Annotated 1953

37 **53B-27-302**, Utah Code Annotated 1953

38 **53B-27-303**, Utah Code Annotated 1953



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

41 Section 1. Section **53B-27-301** is enacted to read:

42 **Part 3. Student Civil Liberties Protection Act**

43 **53B-27-301. Definitions.**

44 As used in this part:

45 (1) "Civil liberty" means a civil liberty enumerated in the United States Constitution or
46 the Utah Constitution.

47 (2) "Initiate rulemaking proceedings" means the same as that term is defined in Section
48 63G-3-601.

49 Section 2. Section **53B-27-302** is enacted to read:

50 **53B-27-302. Policies requiring rulemaking -- Policy review.**

51 (1) An institution may not make or amend a policy that directly affects a student's civil
52 liberty, unless the policy is made a rule in accordance with Title 63G, Chapter 3, Utah
53 Administrative Rulemaking Act.

54 (2) Each institution shall:

55 (a) before November 30, 2018, review the institution's policies current on May 11,
56 2018, and identify any policy that directly affects a student's civil liberty; and

57 (b) before August 1, 2019, for each policy identified under Subsection (2)(a), repeal the
58 policy or initiate rulemaking proceedings to make the policy a rule.

59 Section 3. Section **53B-27-303** is enacted to read:

60 **53B-27-303. Complaint process -- Reporting.**

61 (1) Before August 1, 2019, the board shall make rules in accordance with Title 63G,
62 Chapter 3, Utah Administrative Rulemaking Act, establishing a procedure whereby a student
63 enrolled in an institution may submit a complaint to the board alleging that a policy of the
64 institution directly affects one or more of the student's civil liberties.

65 (2) (a) When a student submits a complaint in accordance with the rules adopted under
66 Subsection (1), the board shall:

67 (i) examine the complaint and determine whether the complaint is made in good faith;
68 and

69 (ii) (A) if the board determines that the complaint is made in good faith, direct the
70 institution against which the complaint is made to initiate rulemaking proceedings for the
71 challenged policy; or

72 (B) if the board determines that the complaint is made in bad faith, dismiss the
73 complaint.

74 (b) Before November 30 of each year, the board shall submit a report to the
75 Administrative Rules Review Committee detailing:

76 (i) the number of complaints the board received during the preceding year;

77 (ii) the number of complaints the board found to be made in good faith during the
78 preceding year; and

79 (iii) each policy that is the subject of a good-faith complaint that the board received
80 during the preceding year.

81 (3) If the board directs an institution to initiate rulemaking proceedings for a
82 challenged policy in accordance with this section, the institution shall initiate rulemaking
83 proceedings for the policy within 60 days after the day on which the board directs the
84 institution.

85 Section 4. Section **63G-3-201** is amended to read:

86 **63G-3-201. When rulemaking is required.**

87 (1) Each agency shall:

88 (a) maintain a current version of its rules; and

89 (b) make it available to the public for inspection during its regular business hours.

90 (2) In addition to other rulemaking required by law, each agency shall make rules when
91 agency action:

- 92 (a) authorizes, requires, or prohibits an action;
- 93 (b) provides or prohibits a material benefit;
- 94 (c) applies to a class of persons or another agency; and
- 95 (d) is explicitly or implicitly authorized by statute.

96 (3) Rulemaking is also required when an agency issues a written interpretation of a
97 state or federal legal mandate.

98 (4) Rulemaking is not required when:

99 (a) agency action applies only to internal agency management, inmates or residents of a
100 state correctional, diagnostic, or detention facility, persons under state legal custody, patients
101 admitted to a state hospital, members of the state retirement system, or, except as provided in
102 Title 53B, Chapter 27, Part 3, Student Civil Liberties Protection Act, students enrolled in a
103 state education institution;

104 (b) a standardized agency manual applies only to internal fiscal or administrative
105 details of governmental entities supervised under statute;

106 (c) an agency issues policy or other statements that are advisory, informative, or
107 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

108 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file
109 all nonsubstantive changes in a rule with the office.

110 (5) (a) A rule shall enumerate any penalty authorized by statute that may result from its
111 violation, subject to Subsections (5)(b) and (c).

112 (b) A violation of a rule may not be subject to the criminal penalty of a class C
113 misdemeanor or greater offense, except as provided under Subsection (5)(c).

114 (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal
115 penalty under Subsection (5)(a) when:

116 (i) authorized by a specific state statute;

117 (ii) a state law and programs under that law are established in order for the state to
118 obtain or maintain primacy over a federal program; or

119 (iii) state civil or criminal penalties established by state statute regarding the program
120 are equivalent to or less than corresponding federal civil or criminal penalties.

121 (6) Each agency shall enact rules incorporating the principles of law not already in its
122 rules that are established by final adjudicative decisions within 120 days after the decision is
123 announced in its cases.

124 (7) (a) Each agency may enact a rule that incorporates by reference:

125 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
126 agency, an agency or political subdivision of this state, an agency of another state, or by a
127 nationally recognized organization or association;

128 (ii) state agency implementation plans mandated by the federal government for
129 participation in the federal program;

130 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,
131 fully described in the rule, and are available for public inspection; or

132 (iv) lists, tables, illustrations, or similar materials that the executive director or the
133 executive director's designee determines are too expensive to reproduce in the administrative
134 code.

135 (b) Rules incorporating materials by reference shall:

136 (i) be enacted according to the procedures outlined in this chapter;

137 (ii) state that the referenced material is incorporated by reference;

138 (iii) state the date, issue, or version of the material being incorporated; and

139 (iv) define specifically what material is incorporated by reference and identify any
140 agency deviations from it.

141 (c) The agency shall identify any substantive changes in the material incorporated by
142 reference by following the rulemaking procedures of this chapter.

143 (d) The agency shall maintain a complete and current copy of the referenced material
144 available for public review at the agency and at the office.

145 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within
146 the limits prescribed by statute or agency rule.

147 (b) An agency may enact a rule creating a justified exception to a rule.

148 (9) An agency may obtain assistance from the attorney general to ensure that its rules
149 meet legal and constitutional requirements.

**Legislative Review Note
Office of Legislative Research and General Counsel**