

Senator Howard A. Stephenson proposes the following substitute bill:

STUDENT CIVIL LIBERTIES PROTECTION ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill creates the Student Civil Liberties Protection Act.

Highlighted Provisions:

This bill:

- ▶ upon the commissioner of higher education's recommendation, permits the State Board of Regents to hire legal staff;
- ▶ 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 or to the Utah System of Technical Colleges Board of Trustees;
- ▶ requires the State Board of Regents and the Utah System of Technical Colleges Board of Trustees to:
 - establish a complaint process; and



- 26 • report annually to the Administrative Rules Review Committee;
- 27 ▶ amends the Utah Administrative Rulemaking Act; and
- 28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **53B-1-106**, as enacted by Laws of Utah 1987, Chapter 167

36 **63G-3-201**, as last amended by Laws of Utah 2017, Chapter 181

37 ENACTS:

38 **53B-27-301**, Utah Code Annotated 1953

39 **53B-27-302**, Utah Code Annotated 1953

40 **53B-27-303**, Utah Code Annotated 1953



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

43 Section 1. Section **53B-1-106** is amended to read:

44 **53B-1-106. Appointment and hiring of staff -- Transfer of functions, personnel,**
45 **and funds.**

46 Upon the commissioner's recommendation, the board appoints and hires a staff of
47 professional, legal, and administrative personnel to serve at ~~[its]~~ the board's pleasure.
48 ~~[Salaries]~~ The board determines salaries, retirement provisions, other benefits, and capacities of
49 service ~~[are determined by the board]~~. If the board transfers a staff function from an
50 institution's own staff, the funds the institution budgeted ~~[by the institution]~~ for the transferred
51 functions are transferred to the board. Transferred personnel retain their retirement and other
52 benefits and seniority of term standing with the institution from which they are transferred.

53 Section 2. Section **53B-27-301** is enacted to read:

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

55 **53B-27-301. Definitions.**

56 As used in this part:

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

59 (2) "Governing board" means:

60 (a) for an institution described in Subsections 53B-2-101(1)(a) through (h), the board;

61 or

62 (b) for a technical college, the Utah System of Technical Colleges Board of Trustees.

63 (3) "Initiate rulemaking proceedings" means the same as that term is defined in Section
64 63G-3-601.

65 Section 3. Section **53B-27-302** is enacted to read:

66 **53B-27-302. Policies requiring rulemaking -- Policy review.**

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

70 (2) Each institution shall:

71 (a) before November 30, 2018, review the institution's policies as of May 11, 2018, and
72 identify any policy that directly affects a student's civil liberty; and

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

75 Section 4. Section **53B-27-303** is enacted to read:

76 **53B-27-303. Complaint process -- Reporting.**

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

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

83 (i) examine the complaint and, within 30 days after the day on which the governing
84 board receives the complaint, determine whether the complaint is made in good faith; and

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

88 (B) if the governing board determines that the complaint is made in bad faith, dismiss
89 the complaint.

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

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

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

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

97 (3) If a governing board directs an institution to initiate rulemaking proceedings for a
98 challenged policy in accordance with this section, the institution shall initiate rulemaking
99 proceedings for the policy within 60 days after the day on which the governing board directs
100 the institution.

101 Section 5. Section **63G-3-201** is amended to read:

102 **63G-3-201. When rulemaking is required.**

103 (1) Each agency shall:

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

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

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

108 (a) authorizes, requires, or prohibits an action;

109 (b) provides or prohibits a material benefit;

110 (c) applies to a class of persons or another agency; and

111 (d) is explicitly or implicitly authorized by statute.

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

114 (4) Rulemaking is not required when:

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

119 state education institution;

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

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

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

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

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

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

132 (i) authorized by a specific state statute;

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

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

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

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

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

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

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

148 (iv) lists, tables, illustrations, or similar materials that the executive director or the
149 executive director's designee determines are too expensive to reproduce in the administrative

150 code.

151 (b) Rules incorporating materials by reference shall:

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

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

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

155 (iv) define specifically what material is incorporated by reference and identify any

156 agency deviations from it.

157 (c) The agency shall identify any substantive changes in the material incorporated by

158 reference by following the rulemaking procedures of this chapter.

159 (d) The agency shall maintain a complete and current copy of the referenced material

160 available for public review at the agency and at the office.

161 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within

162 the limits prescribed by statute or agency rule.

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

164 (9) An agency may obtain assistance from the attorney general to ensure that its rules

165 meet legal and constitutional requirements.