

DIVISIVE CONCEPTS IN GOVERNMENT AND EDUCATION

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John D. Johnson

House Sponsor: _____

LONG TITLE

General Description:

This bill prohibits certain teaching and training requirements by state and local governments, including within the public education and higher education systems, related to divisive concepts.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits public schools, institutions of higher education, and other state and local government entities from:
 - including certain divisive concepts in teaching and training materials;
 - imposing training requirements that relate to the promotion of certain divisive concepts; and
 - accepting funding or grants that relate to the promotion of certain divisive concepts;
- ▶ requires the Public Education Appropriations Subcommittee, the Higher Education Appropriations Subcommittee, and the Executive Appropriations Committee to consider certain compliance when weighing requests for appropriations;
- ▶ includes a violation of the prohibitions related to divisive concepts as an automatic trigger for an investigation and hearing by the Utah Professional Practices Advisory Commission related to an educator's license; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **53B-1-301**, as last amended by Laws of Utah 2021, Chapters 282, 351, 402, and 425

36 **53E-1-202**, as last amended by Laws of Utah 2021, Chapters 251 and 319

37 **53E-6-604**, as last amended by Laws of Utah 2020, Chapter 327

38 **53G-10-202**, as last amended by Laws of Utah 2019, Chapter 293

39 **63G-22-102**, as last amended by Laws of Utah 2021, Chapter 345

40 **63G-22-103**, as enacted by Laws of Utah 2018, Chapter 200

41 ENACTS:

42 **53B-2-114**, Utah Code Annotated 1953

43 **53G-10-206**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **53B-1-301** is amended to read:

47 **53B-1-301. Reports to and actions of the Higher Education Appropriations**
48 **Subcommittee.**

49 (1) In accordance with applicable provisions and Section **68-3-14**, the following
50 recurring reports are due to the Higher Education Appropriations Subcommittee:

51 (a) the reports described in Sections **34A-2-202.5**, **53B-30-206**, and **59-9-102.5** by the
52 Rocky Mountain Center for Occupational and Environmental Health;

53 (b) the report described in Section **53B-7-101** by the board on recommended
54 appropriations for higher education institutions, including the report described in Section
55 **53B-8-104** by the board on the effects of offering nonresident partial tuition scholarships;

56 (c) the report described in Section **53B-7-704** by the Department of Workforce
57 Services and the Governor's Office of Economic Opportunity on targeted jobs;

58 (d) the reports described in Section **53B-7-705** by the board on performance;

- 59 (e) the report described in Section 53B-8-201 by the board on the Opportunity
60 Scholarship Program;
- 61 (f) the report described in Section 53B-8-303 by the board regarding Access Utah
62 promise scholarships;
- 63 (g) the report described in Section 53B-8d-104 by the Division of Child and Family
64 Services on tuition waivers for wards of the state;
- 65 (h) the report described in Section 53B-12-107 by the Utah Higher Education
66 Assistance Authority;
- 67 (i) the report described in Section 53B-13a-104 by the board on the Success Stipend
68 Program;
- 69 (j) the report described in Section 53B-17-201 by the University of Utah regarding the
70 Miners' Hospital for Disabled Miners;
- 71 (k) the report described in Section 53B-26-103 by the Governor's Office of Economic
72 Opportunity on high demand technical jobs projected to support economic growth;
- 73 (l) the report described in Section 53B-26-202 by the Medical Education Council on
74 projected demand for nursing professionals; and
- 75 (m) the report described in Section 53E-10-308 by the State Board of Education and
76 board on student participation in the concurrent enrollment program.
- 77 (2) In accordance with applicable provisions and Section 68-3-14, the following
78 occasional reports are due to the Higher Education Appropriations Subcommittee:
- 79 (a) upon request, the information described in Section 53B-8a-111 submitted by the
80 Utah Educational Savings Plan;
- 81 (b) a proposal described in Section 53B-26-202 by an eligible program to respond to
82 projected demand for nursing professionals;
- 83 (c) a report in 2023 from Utah Valley University and the Utah Fire Prevention Board
84 on the fire and rescue training program described in Section 53B-29-202; and
- 85 (d) the reports described in Section 63C-19-202 by the Higher Education Strategic
86 Planning Commission on the commission's progress.
- 87 (3) In accordance with applicable provisions, the Higher Education Appropriations
88 Subcommittee shall complete the following:
- 89 (a) as required by Section 53B-7-703, the review of performance funding described in

90 Section [53B-7-703](#);

91 (b) an appropriation recommendation described in Section [53B-26-103](#) to fund a
92 proposal responding to workforce needs of a strategic industry cluster;

93 (c) an appropriation recommendation described in Section [53B-26-202](#) to fund a
94 proposal responding to projected demand for nursing professionals; and

95 (d) review of the report described in Section [63B-10-301](#) by the University of Utah on
96 the status of a bond and bond payments specified in Section [63B-10-301](#).

97 (4) The Higher Education Appropriations Subcommittee shall consider compliance
98 with Sections [53B-2-114](#) and [63G-22-103](#) regarding divisive concepts when weighing requests
99 for appropriations.

100 Section 2. Section [53B-2-114](#) is enacted to read:

101 **[53B-2-114. Prohibition on instruction or training promoting divisive concepts in](#)**
102 **[higher education.](#)**

103 (1) As used in this section, "divisive concept" means the same as that term is defined in
104 Section [53G-10-206](#).

105 (2) (a) An institution shall ensure that no course of instruction, unit of study,
106 supplemental course material, training, or training material promotes a divisive concept or
107 directs or otherwise compels students or employees of the institution to personally affirm,
108 adopt, or adhere to a divisive concept.

109 (b) An employee of an institution who has a teaching role may not:

110 (i) include the promotion of a divisive concept in a course of instruction, unit of study,
111 supplemental course material, training, or training material;

112 (ii) promote a divisive concept in class discussion; or

113 (iii) direct or otherwise compel students to personally affirm, adopt, or adhere to a
114 divisive concept.

115 (c) An institution or an employee of the institution may not:

116 (i) penalize an individual on account of the individual's refusal to support, believe,
117 endorse, embrace, confess, act upon, or otherwise assent to a divisive concept;

118 (ii) require an employee to engage in a training, orientation, or therapy that promotes a
119 divisive concept or presents any form of stereotyping or blame on the basis of race, sex, or
120 national origin; or

121 (iii) accept private or public funding or grants for the purpose of curriculum
122 development, selection of or purchasing materials, any form of instruction, training, or
123 professional development that relates to the promotion of a divisive concept.

124 (d) Nothing in this Subsection (2) prohibits:

125 (i) the teaching and discussion of truthful, balanced, historically accurate, and unbiased
126 concepts, including, after the students have obtained a foundational understanding of the intent
127 and constructions of the constitution:

128 (A) an impartial discussion of controversial aspects of history, if the discussion is
129 based on original source documents; and

130 (B) instruction on the historical oppression of a particular group of people based on
131 race, ethnicity, class, nationality, religion, or geographic region, if the instruction is based on
132 original source documents; or

133 (ii) a discussion of a divisive concept if the concept is discussed as one of several
134 concepts without any promotion, direction, or compulsion.

135 Section 3. Section **53E-1-202** is amended to read:

136 **53E-1-202. Reports to and action required of the Public Education**

137 **Appropriations Subcommittee.**

138 (1) In accordance with applicable provisions and Section **68-3-14**, the following
139 recurring reports are due to the Public Education Appropriations Subcommittee:

140 (a) the State Superintendent's Annual Report by the state board described in Section
141 **53E-1-203**;

142 (b) the report described in Section **53E-10-703** by the Utah Leading through Effective,
143 Actionable, and Dynamic Education director on research and other activities; and

144 (c) the report by the STEM Action Center Board described in Section **9-22-109**,
145 including the information described in Section **9-22-113** on the status of the computer science
146 initiative.

147 (2) The one-time report by the state board regarding cost centers and implementing
148 activity based costing is due to the Public Education Appropriations Subcommittee in
149 accordance with Section **53E-3-520**.

150 (3) In accordance with applicable provisions, the Public Education Appropriations
151 Subcommittee shall complete the following:

- 152 (a) the review described in Section 53E-2-301 of the WPU value rate; and
- 153 (b) if required, the study described in Section 53F-4-304 of scholarship payments.
- 154 (4) The Public Education Appropriations Subcommittee shall consider compliance
- 155 with Sections 53G-10-206 and 63G-22-103 regarding divisive concepts when weighing
- 156 requests for appropriations.

157 Section 4. Section 53E-6-604 is amended to read:

158 **53E-6-604. State board disciplinary action against an educator.**

159 (1) (a) The state board shall direct UPPAC to investigate an allegation, administrative
160 decision, or judicial decision that evidences an educator is unfit for duty because the educator
161 exhibited behavior that:

- 162 (i) is immoral, unprofessional, or incompetent; or
- 163 (ii) violates standards of ethical conduct, performance, or professional competence.

164 (b) If the state board determines an allegation or decision described in Subsection
165 (1)(a) does not evidence an educator's unfitness for duty, the state board may dismiss the
166 allegation or decision without an investigation or hearing.

167 (2) The state board shall direct UPPAC to investigate and allow an educator to respond
168 in a UPPAC hearing if the state board receives an allegation that the educator:

- 169 (a) was charged with a felony of a sexual nature;
- 170 (b) was convicted of a felony of a sexual nature;
- 171 (c) pled guilty to a felony of a sexual nature;
- 172 (d) entered a plea of no contest to a felony of a sexual nature;
- 173 (e) entered a plea in abeyance to a felony of a sexual nature;
- 174 (f) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual

175 Offenses, against a minor child;

176 (g) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
177 student who is a minor; or

178 (h) engaged in sexually explicit conduct, as defined in Section 76-5b-103, with a
179 student who:

- 180 (i) is not enrolled in an adult education program in an LEA;
- 181 (ii) is not a minor; and
- 182 (iii) (A) is enrolled in an LEA where the educator is employed; or

183 (B) is a participant in an extracurricular program in which the educator is involved.

184 (3) Upon notice that an educator allegedly violated Section [53E-6-701](#) or [53G-10-206](#),

185 the state board shall direct UPPAC to:

186 (a) investigate the alleged violation; and

187 (b) hold a hearing to allow the educator to respond to the allegation.

188 (4) Upon completion of an investigation or hearing described in this section, UPPAC

189 shall:

190 (a) provide findings to the state board; and

191 (b) make a recommendation for state board action.

192 (5) (a) Except as provided in Subsection (5)(b) and subject to Subsection (5)(c), upon

193 review of UPPAC's findings and recommendation, the state board may:

194 (i) revoke the educator's license;

195 (ii) suspend the educator's license;

196 (iii) restrict or prohibit the educator from renewing the educator's license;

197 (iv) warn or reprimand the educator;

198 (v) enter into a written agreement with the educator that requires the educator to

199 comply with certain conditions;

200 (vi) direct UPPAC to further investigate or gather information; or

201 (vii) take other action the state board finds to be appropriate for and consistent with the
202 educator's behavior.

203 (b) Upon review of UPPAC's findings and recommendation, the state board shall
204 revoke the license of an educator who:

205 (i) was convicted of a felony of a sexual nature;

206 (ii) pled guilty to a felony of a sexual nature;

207 (iii) entered a plea of no contest to a felony of a sexual nature;

208 (iv) entered a plea in abeyance to a felony of a sexual nature;

209 (v) was convicted of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
210 Offenses, against a minor child;

211 (vi) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a
212 student who is a minor;

213 (vii) engaged in sexually explicit conduct, as defined in Section [76-5b-103](#), with a

214 student who:

215 (A) is not enrolled in an adult education program in an LEA;

216 (B) is not a minor; and

217 (C) is enrolled in an LEA where the educator is employed or is a participant in an
218 extracurricular program in which the educator is involved; or

219 (viii) admits to the state board or UPPAC that the applicant committed conduct that
220 amounts to:

221 (A) a felony of a sexual nature; or

222 (B) a sexual offense or sexually explicit conduct described in Subsection (5)(b)(v), (vi),
223 or (vii).

224 (c) For an alleged violation of Section 53G-10-206, the state board may:

225 (i) only take an action described in Subsection (5)(a)(iv) or (v) for an initial or
226 unintentional violation; and

227 (ii) may take any action described in Subsection (5)(a) for a subsequent or intentional
228 violation.

229 [~~Ⓒ~~] (d) The state board may not reinstate a revoked license.

230 [~~Ⓓ~~] (e) Before the state board takes adverse action against an educator under this
231 section, the state board shall ensure that the educator had an opportunity for a UPPAC hearing.

232 Section 5. Section 53G-10-202 is amended to read:

233 **53G-10-202. Maintaining constitutional freedom in the public schools.**

234 (1) [~~Any~~] Except as provided in Section 53G-10-206, any instructional activity,
235 performance, or display which includes examination of or presentations about religion, political
236 or religious thought or expression, or the influence thereof on music, art, literature, law,
237 politics, history, or any other element of the curriculum, including the comparative study of
238 religions, which is designed to achieve secular educational objectives included within the
239 context of a course or activity and conducted in accordance with applicable rules or policies of
240 the state and LEA governing boards, may be undertaken in the public schools.

241 (2) No aspect of cultural heritage, political theory, moral theory, or societal value shall
242 be included within or excluded from public school curricula for the primary reason that it
243 affirms, ignores, or denies religious belief, religious doctrine, a religious sect, or the existence
244 of a spiritual realm or supreme being.

245 (3) Public schools may not sponsor prayer or religious devotionals.

246 (4) School officials and employees may not use their positions to endorse, promote, or
247 disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or
248 viewpoint.

249 Section 6. Section **53G-10-206** is enacted to read:

250 **53G-10-206. Prohibition on instruction or training promoting divisive concepts in**
251 **public education.**

252 (1) As used in this section:

253 (a) "Divisive concept" means any of the following divisive concepts:

254 (i) that one identity trait is inherently superior to another identity trait;

255 (ii) that an individual, by virtue of the individual's identity trait, is inherently
256 privileged, racist, sexist, nationalistic, or oppressive, either consciously or subconsciously;

257 (iii) that an individual should be subject to discrimination or receive adverse treatment
258 based on the individual's identity trait;

259 (iv) that an individual's moral character is determined by the individual's identity trait;

260 (v) that an individual, by virtue of the individual's identity trait, bears personal
261 responsibility for actions that other members of the same identity trait committed in the past;

262 (vi) that an individual should feel discomfort, guilt, anguish, or another form of
263 psychological distress solely because of the individual's identity trait;

264 (vii) that the state or the United States is fundamentally, systemically, or irredeemably
265 racist, sexist, or nationalistic;

266 (viii) that the United States government should be violently overthrown;

267 (ix) that an individual should affirm or profess the resentment of an individual based
268 on the individual's identity trait;

269 (x) that certain character traits, values, moral or ethical codes, privileges, or beliefs are
270 ascribed to an identity trait or to an individual because of the individual's identity trait;

271 (xi) that meritocracy or traits such as a hard work ethic are racist, sexist, nationalistic,
272 or created by members of a particular identity trait; or

273 (xii) that the concepts of capitalism, free markets, or free industry are inherently racist.

274 (b) "Educator" means the same as that term is defined in Section [53E-6-102](#) and any
275 school employee.

276 (c) "Identity trait" means race, ethnicity, sex, religion, national origin, or political
277 affiliation.

278 (d) "Original source document" means an artifact, document, diary, manuscript,
279 autobiography, recording, or any other source of information that was created at the time under
280 study.

281 (2) (a) An LEA shall ensure that no course of instruction, unit of study, supplemental
282 course material, training, or training material promotes a divisive concept or directs or
283 otherwise compels students or educators to personally affirm, adopt, or adhere to a divisive
284 concept.

285 (b) An educator may not:

286 (i) include the promotion of a divisive concept in a course of instruction, unit of study,
287 supplemental course material, training, or training material;

288 (ii) promote a divisive concept in classroom discussion; or

289 (iii) direct or otherwise compel students to personally affirm, adopt, or adhere to a
290 divisive concept.

291 (c) An LEA, a public school, or an employee of an LEA or public school may not:

292 (i) penalize an individual on account of the individual's refusal to support, believe,
293 endorse, embrace, confess, act upon, or otherwise assent to a divisive concept;

294 (ii) require an administrator, employee, or other staff member to engage in a training,
295 orientation, or therapy that promotes a divisive concept or presents any form of stereotyping or
296 blame on the basis of race, sex, or national origin; or

297 (iii) accept private or public funding or grants for the purpose of curriculum
298 development, selection of or purchasing materials, any form of instruction, training, or
299 professional development that relates to the promotion of a divisive concept.

300 (d) Nothing in this Subsection (2) prohibits the teaching and discussion of truthful,
301 balanced, historically accurate, and unbiased concepts, including, after the students have
302 obtained a foundational understanding of the intent and constructions of the constitution:

303 (i) an impartial discussion of controversial aspects of history, if the discussion is based
304 on original source documents; and

305 (ii) instruction on the historical oppression of a particular group of people based on
306 race, ethnicity, class, nationality, religion, or geographic region, if the instruction is based on

307 original source documents.

308 (3) An individual may bring an allegation to the state board against an educator for a
309 violation of this section for investigation and potential discipline in accordance with Section
310 53E-6-604.

311 (4) (a) In addition to the investigation and discipline process described in Subsection
312 (3) and Section 53E-6-604, an individual may pursue a complaint and enforcement under this
313 Subsection (4).

314 (b) (i) No later than August 1, 2022, each LEA shall adopt a complaint resolution
315 policy to address complaints alleging violations of this section at a school within the LEA, in
316 accordance with this Subsection (4)(b).

317 (ii) The complaint resolution policy described in Subsection (4)(b)(i) shall provide that
318 a school or LEA is not required to respond to a complaint under this subsection unless the
319 complaint is made by:

320 (A) the parent or guardian of a student enrolled at the school where the alleged
321 violation occurred;

322 (B) a student who has reached the age of majority or is a lawfully emancipated minor
323 and who is enrolled at the school where the alleged violation occurred;

324 (C) an individual employed as an educator at the school where the alleged violation
325 occurred;

326 (D) the district attorney for the county where the alleged violation occurred; or

327 (E) the attorney general.

328 (iii) An individual described in Subsection (4)(b)(ii) shall:

329 (A) first submit the complaint in writing to the principal of the school where the
330 alleged violation occurred; and

331 (B) ensure that the complaint provides a reasonably detailed description of the alleged
332 violation.

333 (iv) Within five school days of receiving a written complaint described in Subsection
334 (4)(b)(iii) unless the school principal and complainant agree to a different schedule, the
335 principal or the principal's designee shall:

336 (A) review the complaint and take reasonable steps to investigate the allegations in the
337 complaint;

338 (B) determine whether the alleged violation occurred, in whole or in part; and
339 (C) confer with the complainant and inform the complainant whether a violation
340 occurred, in whole or in part, and, if such a violation was found to have occurred, what
341 remedial steps will be taken, subject to the confidentiality of student or personnel information.

342 (v) The determinations described in Subsection (4)(b)(iv) are subject to timely
343 administrative review by the local governing board upon a written request by the complainant
344 to the local governing board.

345 (c) (i) No later than July 1, 2022, the state board shall:

346 (A) promulgate a model policy for a complaint resolution process described in
347 Subsection (4)(b); and

348 (B) post the model policy on the state board's website.

349 (ii) The state board shall:

350 (A) develop guidance for LEAs for use when determining whether violations of this
351 section have occurred; and

352 (B) post the guidance on the state board's website.

353 (d) Following a decision by an LEA under Subsection (4)(b)(v):

354 (i) any party aggrieved by the LEA's decision has a right to appeal the decision to the
355 state board; and

356 (ii) any party aggrieved by the decision of the state board regarding an appeal described
357 in Subsection (4)(d)(i) may appeal the state board's decision to the district court having
358 jurisdiction in which the LEA is located.

359 (e) In any district court action described in Subsection (4)(d)(ii), the court may award
360 court costs and reasonable attorney's fees to the prevailing party.

361 (f) Nothing in this Subsection (4) prohibits, restricts, or limits in any manner any cause
362 of action or administrative procedure otherwise provided for by law and available to any
363 individual, including any public elementary or secondary school student or educator.

364 Section 7. Section **63G-22-102** is amended to read:

365 **63G-22-102. Definitions.**

366 As used in this chapter:

367 (1) "Divisive concept" means the same as that term is defined in Section [53G-10-206](#).

368 [(+)] (2) "Political subdivision" means:

- 369 (a) a county;
- 370 (b) a municipality, as defined in Section 10-1-104;
- 371 (c) a local district;
- 372 (d) a special service district;
- 373 (e) an interlocal entity, as defined in Section 11-13-103;
- 374 (f) a community reinvestment agency;
- 375 (g) a local building authority; or
- 376 (h) a conservation district.

377 ~~[(2)]~~ (3) (a) "Public employee" means any individual employed by or volunteering for a
 378 state agency or a political subdivision who is not a public official.

379 (b) "Public employee" does not include an individual employed by or volunteering for
 380 a taxed interlocal entity.

381 ~~[(3)]~~ (4) (a) "Public official" means:

382 (i) an appointed official or an elected official as those terms are defined in Section
 383 63A-17-502; or

384 (ii) an individual elected or appointed to a county office, municipal office, school
 385 board or school district office, local district office, or special service district office.

386 (b) "Public official" does not include an appointed or elected official of a taxed
 387 interlocal entity.

388 ~~[(4)]~~ (5) "State agency" means a department, division, board, council, committee,
 389 institution, office, bureau, or other similar administrative unit of the executive branch of state
 390 government.

391 ~~[(5)]~~ (6) "Taxed interlocal entity" means the same as that term is defined in Section
 392 11-13-602.

393 Section 8. Section 63G-22-103 is amended to read:

394 **63G-22-103. State training and certification requirements -- Online training --**
 395 **Divisive Concepts.**

396 (1) Each state agency or political subdivision that provides any training or certification
 397 that any state agency or political subdivision requires a public employee or public official to
 398 complete shall present the training or make the training available in an online web-based
 399 format, which may include a live webinar, unless:

400 ~~[(1)]~~ (a) the training or certification:

401 ~~[(a)]~~ (i) includes a physical or interactive component that, in the reasonable
402 determination of the agency or political subdivision, the attendee can only complete in person;
403 or

404 ~~[(b)]~~ (ii) takes place over consecutive full-day sessions; or

405 ~~[(2)]~~ (b) no required attendee will travel more than 50 miles from the attendee's
406 primary residence or place of employment, whichever is closer to the training site, to attend the
407 training.

408 (2) (a) A state agency or political subdivision shall ensure that no training, or training
409 material promotes a divisive concept or directs or otherwise compels trainees or other public
410 employees to personally affirm, adopt, or adhere to a divisive concept.

411 (b) An employee of a state agency or political subdivision may not:

412 (i) include the promotion of a divisive concept in a training or training material or;

413 (ii) direct or otherwise compel trainees or other public employees to personally affirm,
414 adopt, or adhere to a divisive concept.

415 (c) A state agency or political subdivision may not:

416 (i) penalize an individual on account of the individual's refusal to support, believe,
417 endorse, embrace, confess, act upon, or otherwise assent to a divisive concept;

418 (ii) require an employee to engage in a training, orientation, or therapy that promotes a
419 divisive concept or presents any form of stereotyping or blame on the basis of race, sex, or
420 national origin; or

421 (iii) accept private or public funding or grants for the purpose of curriculum
422 development, selection of or purchasing materials, any form of instruction, training, or
423 professional development that relates to the promotion of a divisive concept.

424 (d) The Executive Appropriations Committee shall consider compliance with this
425 Subsection (2) when weighing requests for appropriations.

426 Section 9. **Effective date.**

427 This bill takes effect on May 4, 2022, with the exception of Section [53B-2-114](#) which if
428 approved by two-thirds of all the members elected to each house, takes effect upon approval by
429 the governor, or the day following the constitutional time limit of Utah Constitution, Article
430 VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto

431 override.