

- 1 **26-40-105**, Utah Code Annotated 1953
- 2 **26-40-106**, Utah Code Annotated 1953
- 3 **26-40-107**, Utah Code Annotated 1953
- 4 **26-40-108**, Utah Code Annotated 1953
- 5 **26-40-109**, Utah Code Annotated 1953
- 6 **26-40-110**, Utah Code Annotated 1953
- 7 **26-40-111**, Utah Code Annotated 1953
- 8 **26-40-112**, Utah Code Annotated 1953
- 9 **26-40-113**, Utah Code Annotated 1953
- 10 **26-40-114**, Utah Code Annotated 1953
- 11 **26-40-115**, Utah Code Annotated 1953
- 12 **26-40-116**, Utah Code Annotated 1953
- 13 **31A-22-424**, Utah Code Annotated 1953
- 14 **31A-22-623**, Utah Code Annotated 1953
- 15 **34A-5-201**, Utah Code Annotated 1953
- 16 **34A-5-202**, Utah Code Annotated 1953

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

18 Section 1. Section **26-40-101** is enacted to read:

19 **CHAPTER 40. GENETIC TESTING PRIVACY ACT**

20 **26-40-101. Title.**

21 This chapter is known as the "Genetic Testing Privacy Act."

22 Section 2. Section **26-40-102** is enacted to read:

23 **26-40-102. Definitions.**

24 As used in this chapter:

25 (1) "Compulsory disclosure" means any disclosure of genetic information mandated or
26 required by federal or state law in connection with a judicial, legislative, or administrative
27 proceeding.

28 (2) "Disclose" or "disclosure" means to convey or to provide access to private genetic
29 information to a person other than the individual.

30 (3) "DNA" means deoxyribonucleic acid.

31 (4) "DNA sample" means any human biological specimen from which DNA can be

1 extracted, or DNA extracted from such specimen.

2 (5) "DNA typing" means a scientifically reliable method for characterizing and comparing
3 sequences of DNA, and applying a statistical analysis of population frequency to determine that
4 if the DNA sequences match, the probability that the match occurs by chance.

5 (6) "Employer" is as defined in Section 34A-2-103.

6 (7) "Genetic test" means the analysis of an individually identifiable DNA sample.

7 (8) "Health insurer" means an insurer, as defined in Section 31A-1-301, who offers
8 insurance governed by Title 31A, Chapter 22, Part VI, Disability Insurance.

9 (9) "Identifiable individual" means any individual whose name, address, Social Security
10 number, health insurance identification number, or similar identifying information is known,
11 available, or can be determined with reasonable accuracy either directly or by reference to other
12 information.

13 (10) "Individual" means:

14 (a) the person from whose body the DNA sample originated;

15 (b) a person who is authorized to make health care decisions concerning a minor or an
16 incompetent person from whose body or DNA sample originated; or

17 (c) the administrator or executor of a deceased person's estate, if any, otherwise the next
18 of kin of a deceased person from whose body a DNA sample originated.

19 (11) "Individual identifier" means a name, address, Social Security number, health
20 insurance identification number, or similar information by which the identity of an individual can
21 be determined with reasonable accuracy, either directly or by reference to other available
22 information. The term does not include characters, number, or codes assigned to an individual or
23 a DNA sample which cannot be used to determine the individual's identity.

24 (12) "Institutional Review Board" means a board established in accordance with 45 CFR
25 46.102(g)(1992) as such regulation may be amended.

26 (13) "Life insurer" means an insurer, as defined in Section 31A-1-301, who offers
27 insurance governed by Title 31A, Chapter 22, Part IV, Life Insurance and Annuities.

28 (14) "Person" means all persons, organizations, and entities other than the individual.

29 (15) "Private genetic information" means any information about an identifiable individual
30 that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the
31 presence or absence of a specific DNA marker or markers, and which has been obtained:

1 (a) from a test or analysis of the individual's DNA; or

2 (b) from a test or analysis of a person to whom the individual is related.

3 (16) "Research subject" means:

4 (a) a person whose DNA sample is analyzed as part of a research project;

5 (b) a person who is authorized to make health care decisions concerning a minor or
6 incompetent person whose DNA sample is analyzed as part of a research project; or

7 (c) the administrator or executor of a deceased person's estate, if any, otherwise the next
8 of kin of a deceased person whose DNA sample is analyzed as part of a research project.

9 Section 3. Section **26-40-103** is enacted to read:

10 **26-40-103. Collection of DNA samples.**

11 Except as provided in Section 26-40-110, no person may collect or cause to be collected
12 an individually identifiable DNA sample for genetic analysis without verbally informing the
13 individual:

14 (1) that consent to the collection and the taking of the DNA is voluntary;

15 (2) that consent to the genetic analysis is voluntary;

16 (3) of the information that can be reasonably expected to be derived from the genetic
17 analysis;

18 (4) of the use, if any, that the individual will be able to make of the information derived
19 from the genetic analysis;

20 (5) of the right to inspect records that contain information derived from the genetic
21 analysis;

22 (6) of the right to have the DNA sample destroyed;

23 (7) of the right to revoke consent to the genetic analysis at any time prior to the completion
24 of the analysis;

25 (8) that the genetic analysis may result in information about the individual's genetic
26 relatives which may not be known to such relatives but could be important, and if so, the
27 individual will have to decide whether or not to share that information with relatives;

28 (9) of the possibility of someone else asking the individual in the future of the existence
29 of a genetic test or analysis and potentially conditioning a benefit on the disclosure of information
30 regarding such testing or analysis;

31 (10) that the collection and analysis of the DNA sample, and the private genetic

1 information derived from the analysis is protected by this chapter; and

2 (11) of the availability of genetic counseling.

3 Section 4. Section **26-40-104** is enacted to read:

4 **26-40-104. Analysis of DNA samples.**

5 Except as provided in Section 26-40-110, no person may analyze an individually
6 identifiable DNA sample without the written informed consent of the individual that is dated and
7 signed and includes at least the following:

8 (1) a general description of the test;

9 (2) the identity of the person who will collect the DNA sample or cause the DNA sample
10 to be collected;

11 (3) the facility in which the analysis will be performed;

12 (4) the manner in which the sample is to be collected;

13 (5) a description of all authorized uses of the DNA sample;

14 (6) an indication of whether or not the individual permits the sample to be maintained and
15 stored in an individually identifiable form after the analysis is complete;

16 (7) an indication of whether the individual prohibits the use of the DNA sample for
17 research or commercial purposes even if the sample is not in an individually identifiable form;

18 (8) a statement of the purpose of the test, its limitations, and potential uses;

19 (9) a statement that a positive result is an indication that the individual may be predisposed
20 to or have the specific disease or condition tested for and may wish to consider further independent
21 testing, consult a physician, or pursue genetic counseling;

22 (10) a general description of each specific disease or condition tested for;

23 (11) the level of certainty, if established, that a positive test result for that disease or
24 condition serves as a predictor of such disease; and

25 (12) a statement that test results may only be disclosed in accordance with the written
26 authorization of the individual.

27 Section 5. Section **26-40-105** is enacted to read:

28 **26-40-105. Ownership and destruction of DNA samples.**

29 (1) An individually identifiable DNA sample is the property of the individual.

30 (2) Except when a DNA sample has been collected pursuant to Section 26-40-110:

31 (a) the individual shall have the right to order the destruction of the DNA sample; and

1 (b) an individually identifiable DNA sample shall be destroyed on completion of genetic
2 testing authorized by the individual pursuant to Section 26-40-104 unless:

3 (i) the individual has directed otherwise in writing; or

4 (ii) all individual identifiers linking the sample to the individual are destroyed.

5 Section 6. Section **26-40-106** is enacted to read:

6 **26-40-106. Disclosure of private genetic information.**

7 (1) Except as provided in Sections 26-40-110 and 26-40-111, no person who, in the
8 ordinary course of business, practice of a profession, or rendering of a service, creates, stores,
9 receives, or furnishes private genetic information, may disclose private genetic information to
10 another person without the prior written authorization of the individual that is dated and signed and
11 includes at least the following:

12 (a) the identity of the person authorizing the disclosure;

13 (b) the identity of the person permitted to make the disclosure;

14 (c) the identity of each person to whom the information is to be disclosed;

15 (d) a description of the specific genetic information to be disclosed;

16 (e) a description of the purpose for which the disclosure is being made;

17 (f) the expiration date of the authorization, which may not be longer than 30 days after the
18 date of authorization; and

19 (g) a statement that the authorization is subject to revocation at any time before the
20 disclosure is actually made.

21 (2) A copy of the authorization shall be provided to the person making the authorization.

22 (3) An individual may revoke or amend the authorization at any time by contacting the
23 person to whom authorization was given.

24 (4) An individual may not maintain an action against a person for disclosure of private
25 genetic information made in good faith reliance on a valid authorization if the person had no notice
26 of the revocation of the authorization at the time the disclosure was made.

27 (5) Each disclosure made pursuant to a written authorization described in Subsection (1)
28 must be accompanied by the following written statement: "This information has been disclosed
29 to you from private records protected under the Genetic Testing Privacy Act and any further
30 disclosure of the information without specific authorization from the individual is prohibited."

31 (6) A general authorization for the release of medical records or medical information may

1 not be used as a written authorization for the disclosure of private genetic information.

2 Section 7. Section **26-40-107** is enacted to read:

3 **26-40-107. Restrictions on employers.**

4 (1) Except as provided in Subsection (2), an employer may not in connection with a hiring,
5 promotion, retention, or any other employment related decision:

6 (a) require or request an individual or family member of the individual to take a genetic
7 test;

8 (b) make any inquiry to determine whether an individual or a blood relative of the
9 individual has taken or refused to take a genetic test, or what the results of any such test were;

10 (c) take into consideration the fact that a genetic test was taken or refused to be taken by
11 an individual or blood relative of the individual; or

12 (d) take into consideration any private genetic information about an individual or a family
13 member.

14 (2) Notwithstanding Subsection (1), an employer may consider private genetic information
15 in connection with an employment decision if the individual, on his own initiative, has voluntarily
16 submitted the information and the information is favorable to the individual.

17 Section 8. Section **26-40-108** is enacted to read:

18 **26-40-108. Restrictions on health insurers.**

19 (1) Except as provided in Subsection (2), a health insurer may not in connection with the
20 offer or renewal of a health insurance policy or in the determination of premiums, coverage,
21 renewal, or any other matter related to underwriting:

22 (a) require or request an individual or family member of the individual to take a genetic
23 test;

24 (b) make any inquiry to determine whether an individual or a blood relative of the
25 individual has taken or refused to take a genetic test, or what the results of any such test were;

26 (c) take into consideration the fact that a genetic test was taken or refused to be taken by
27 an individual or family member of the individual; or

28 (d) take into consideration any private genetic information about an individual or family
29 member.

30 (2) Notwithstanding Subsection (1), a health insurer may consider the results of a genetic
31 test in connection with a health insurance policy if the individual, on his own initiative, has

1 voluntarily submitted the results and the results are favorable to the individual.

2 Section 9. Section **26-40-109** is enacted to read:

3 **26-40-109. Restrictions on life insurers.**

4 (1) A life insurer may not collect or cause to be collected, or perform or cause to be
5 performed a genetic analysis of an individually identifiable DNA sample for the purpose of
6 determining insurability for a life insurance policy without the prior written informed consent of
7 the individual as provided in Subsection (2).

8 (2) Written informed consent under this section shall consist of a writing on a form
9 approved by the Insurance Commissioner before it is used that is dated and signed and includes
10 at least the following:

11 (a) a general description of the test;

12 (b) a statement of the purpose of the test, its limitations, and potential uses;

13 (c) a statement that a positive result is an indication that the individual may be predisposed
14 to or have the specific disease or condition tested for and may wish to consider further independent
15 testing, consult a physician, or pursue genetic counseling;

16 (d) a statement that no tests other than those authorized shall be performed on the DNA
17 sample and that the sample shall be destroyed at the end of the testing process or no more than 60
18 days after the sample was taken;

19 (e) a statement regarding the manner in which the insurer may use the test results of
20 genetic analysis in determining insurability;

21 (f) a statement that the individual may wish to consult a genetics counselor before taking
22 the test and whether the insurer will pay for any such consultation;

23 (g) a statement that the insurer may not require the individual to submit to a genetic test
24 unless the cost of the test is paid for by the insurer;

25 (h) a statement that the insurer will notify the individual of the results of a genetic test
26 within 30 days of receiving them;

27 (i) a statement that, with the exception of a notation that a genetic test was conducted and
28 any formal action taken as a result of the test, the insurer will destroy all private genetic
29 information resulting from a test within 60 days of receiving test results; and

30 (j) a statement that the insurer may not disclose private genetic information to any third
31 party except for a physician at the individual's written request.

1 Section 10. Section **26-40-110** is enacted to read:

2 **26-40-110. Exceptions to informed consent.**

3 (1) Notwithstanding any other provision in this chapter, a person may provide access to
4 an individually identifiable DNA sample, or to data derived from DNA typing, to assist in the
5 identification of a dead body, provided that the analysis of any sample so provided and the analysis
6 of any DNA sample from the dead body is limited to that which is necessary to determine the
7 identity of the dead body.

8 (2) Nothing in this chapter may be construed to affect the authority of law enforcement
9 agencies under Title 53, Chapter 5, Part 2, Criminal Identification Act, in collecting, storing,
10 testing, typing, and controlling access to DNA samples in the course of conducting criminal
11 investigations.

12 (3) Nothing in this chapter shall be construed to prohibit the collection or analysis of an
13 individually identifiable DNA sample pursuant to Title 62A, Chapter 11, Recovery Services, Title
14 78, Chapter 45a, Uniform Act on Paternity, or Rule 35 of the Utah Rules of Civil Procedure, if the
15 genetic condition of the individual has been placed at issue and the order or agency request
16 specifies:

17 (a) the manner of collection of the DNA sample;

18 (b) the person or persons authorized to collect and analyze the sample;

19 (c) the purpose of the genetic analysis;

20 (d) that the genetic analysis is limited to that which is necessary to fulfill the purpose of
21 the order or request; and

22 (e) that the person conducting the analysis destroy the sample at the earliest possible
23 opportunity consistent with the purpose of the order or request.

24 Section 11. Section **26-40-111** is enacted to read:

25 **26-40-111. Compulsory disclosure of private genetic information.**

26 (1) No person who maintains private genetic information may be compelled to disclose
27 such information pursuant to a request for compulsory disclosure in any judicial, legislative, or
28 administrative proceeding unless:

29 (a) the person maintaining the genetic information has received the authorization of the
30 individual to release the information in response to the request for compulsory disclosure;

31 (b) the individual is a party to the proceeding and the private genetic information is at

1 issue; or

2 (c) the genetic information is for use in a law enforcement proceeding or investigation in
3 which the person maintaining the information is the subject or party.

4 (2) (a) A person requesting compulsory disclosure pursuant to Subsection (1)(b) or (c)
5 shall serve upon the person maintaining the genetic information and upon the individual:

6 (i) a copy of the request at least ten days prior to the date on which the compulsory
7 disclosure is requested; and

8 (ii) a statement of the right of the individual or person maintaining the genetic information
9 to have any objections to compulsory disclosure heard by the court or governmental agency prior
10 to the issuance of a compulsory disclosure order, and the procedure to be followed to have any
11 such objections heard.

12 (b) Service under Subsection (2)(a) may be sent by certified mail, return receipt requested,
13 or hand delivered.

14 (3) Service of a compulsory disclosure request upon a person maintaining private genetic
15 information shall be accompanied by a written certification, signed by the person seeking to obtain
16 the private genetic information or his authorized representative:

17 (a) identifying at least one subsection of Section (1) under which compulsory disclosure
18 is being sought; and

19 (b) indicating that the notice requirement of Subsection (2)(a) has been met.

20 (4) An order under this section may only be entered upon a finding that:

21 (a) other ways of obtaining the private information are not available or would not be
22 effective; and

23 (b) there is a compelling need for the private genetic information which outweighs the
24 potential harm to the privacy interest of the individual.

25 (5) An order under this section which authorizes the disclosure of private genetic
26 information shall:

27 (a) limit disclosure to those parts of the record containing such information which are
28 essential to fulfill the objective of the order;

29 (b) limit disclosure to those persons whose need for the information is the basis of the
30 order; and

31 (c) include such other measures as may be necessary to limit disclosure for the protection

1 of the individual.

2 Section 12. Section **26-40-112** is enacted to read:

3 **26-40-112. Research activities involving genetic analysis.**

4 (1) No individually identifiable DNA sample may be analyzed as part of a research project
5 unless an Institutional Review Board has determined that:

6 (a) use of individually identifiable DNA samples is essential to the research project;

7 (b) the potential benefit of the research project outweighs the potential risks to research
8 subjects, including psychosocial risks and intrusion into privacy of the subjects that would result
9 from analysis of individually identifiable samples;

10 (c) the research protocol:

11 (i) requires that research subjects will be given the information set forth in Section
12 26-40-103;

13 (ii) requires the written authorization of research subjects that includes the requirements
14 of Section 26-40-104;

15 (iii) prohibits inclusion of research records in medical records unless the research subject
16 authorizes such inclusion in writing; and

17 (iv) contains adequate safeguards to protect against disclosure of private genetic
18 information that is generated by the research, including:

19 (A) ensuring that research subjects will not be identifiable in any report or publication
20 which results from the research; and

21 (B) having procedures to remove or destroy at the earliest opportunity consistent with the
22 purposes of the project, information that would enable a research subject to be identified.

23 (2) (a) In the absence of a specific authorization to maintain an individually identifiable
24 DNA sample, individually identifiable DNA samples collected, stored, or analyzed in connection
25 with a research project shall be destroyed upon completion of the project or withdrawal of the
26 research subject from the project, whichever occurs first, unless Subsection (2)(b) applies.

27 (b) Whenever the authorization for collection, storage, or analysis of an individually
28 identifiable DNA sample does not contain a prohibition against research use of the sample when
29 it is no longer linked to an individual identifier, the person in possession of the sample may destroy
30 all individual identifiers linking the sample to the individual instead of destroying the sample as
31 required by Subsection (2)(a).

1 (3) When a research project includes analysis of DNA from family members for pedigree
2 analysis or linkage analysis:

3 (a) the Institutional Review Board, in addition to making the determinations required in
4 Subsection (1), shall require:

5 (i) that education and counseling regarding how pedigree analysis is conducted and the
6 kind of information that results from such analysis is provided to research subjects; and

7 (ii) that as far as practicable separate records are maintained on each subject; and

8 (b) a research subject, prior to participation and in addition to the disclosures required by
9 Section 26-40-103, shall be informed:

10 (i) that one risk of participation is that by the end of the project other family members may
11 learn private genetic information about the individual;

12 (ii) of what will be done with records and data generated during the project; and

13 (iii) that the project may determine that some family members are not genetic relatives.

14 (4) Nothing in this chapter may be construed to prohibit or limit research on a DNA
15 sample that cannot be linked to any individual identifier.

16 Section 13. Section **26-40-113** is enacted to read:

17 **26-40-113. Disclosure of private genetic information for research purposes.**

18 (1) Except as provided in Subsection (2), no person may allow a researcher to access
19 private genetic information unless:

20 (a) an Institutional Review Board has approved the conduct of the research program or
21 study; and

22 (b) the individual has specifically consented to the access or disclosure of the information
23 in an authorization that meets the requirements of Section 26-40-106.

24 (2) A person may grant access to private genetic information solely for the purpose of
25 inspection or review of records containing the information provided that:

26 (a) the inspection or review is for the purpose of compiling data for statistical or
27 epidemiological studies and private genetic information is not to be copied, removed from the
28 records, or redisclosed in any way; and

29 (b) the person conducting the inspection or review certifies in writing:

30 (i) that these limitations will be complied with; and

31 (ii) to an awareness of their liability for violations of this chapter.

1 Section 14. Section **26-40-114** is enacted to read:

2 **26-40-114. DNA samples collected prior to July 1, 1998.**

3 (1) Any person who, prior to July 1, 1998, is in possession of an individually identifiable
4 DNA sample shall, prior to performing any genetic analysis on the DNA samples:

5 (a) make the disclosures required by Section 26-40-103; and

6 (b) obtain a written authorization that meets the requirements of Section 26-40-104; or

7 (c) take all necessary steps to ensure that the DNA sample is no longer linked to any
8 individual identifier.

9 (2) An authorization for the disclosure of private genetic information that is executed
10 before July 1, 1998, and which does not meet the requirements of Section 26-40-106, shall remain
11 valid until August 1, 1998, or the expiration date specified in the authorization, whichever occurs
12 earlier.

13 Section 15. Section **26-40-115** is enacted to read:

14 **26-40-115. Private right of action.**

15 (1) Any person whose rights under this chapter have been violated may maintain a civil
16 action for damages and equitable relief.

17 (2) Any person who through negligence collects or analyzes a DNA sample in violation
18 of this chapter, or discloses private genetic information in violation of this chapter, shall be liable
19 to the individual for each violation in an amount equal to:

20 (a) actual damages sustained as a result of the violation or \$5,000, whichever is greater;

21 (b) treble damages, if the violation resulted in profit or monetary gain; and

22 (c) reasonable attorneys' fees and costs.

23 (3) Any person who through a request, the use of persuasion, under threat, or with a
24 promise of reward, willfully induces a person to collect or analyze a DNA sample in violation of
25 this chapter or to disclose private genetic information in violation of this chapter, or who, himself,
26 willfully collects or analyzes a DNA sample in violation of this chapter, or willfully discloses
27 private genetic information in violation of this chapter shall be liable to the individual for each
28 violation in an amount equal to:

29 (a) actual damages sustained as a result of the violation or \$15,000, whichever is greater;

30 (b) punitive damages as the court may allow; and

31 (c) reasonable attorneys' fees and costs.

1 Section 16. Section **26-40-116** is enacted to read:

2 **26-40-116. Enforcement.**

3 (1) Whenever the attorney general has reason to believe that any person is using or is about
4 to use any method, act, or practice in violation of the provisions of this chapter, and that
5 proceedings would be in the public interest, the attorney general may bring an action against the
6 person to restrain or enjoin the use of such method, act, or practice.

7 (2) In addition to restraining or enjoining the use of a method, act, or practice, the court
8 may require the payment of:

9 (a) a civil fine of not more than \$25,000 for each violation; and

10 (b) reasonable costs of investigation and litigation, including reasonable attorneys' fees.

11 Section 17. Section **31A-22-424** is enacted to read:

12 **31A-22-424. Genetic testing restrictions.**

13 Except as provided in Section 26-40-109, a life insurer may not collect or cause to be
14 collected, or perform or cause to be performed a genetic analysis of an individually identifiable
15 DNA sample for the purpose of determining insurability for a life insurance policy.

16 Section 18. Section **31A-22-623** is enacted to read:

17 **31A-22-623. Genetic testing restrictions.**

18 Except as provided in Section 26-40-108, an insurer may not in connection with the offer
19 or renewal of a disability policy or in the determination of premiums, coverage, renewal, or any
20 other matter related to underwriting:

21 (1) require or request an individual or family member of the individual to take a genetic
22 test;

23 (2) make any inquiry to determine whether an individual or a blood relative of the
24 individual has taken or refused to take a genetic test, or what the results of any such test were;

25 (3) take into consideration the fact that a genetic test was taken or refused to be taken by
26 an individual or family member of the individual; or

27 (4) take into consideration any private genetic information about an individual or family
28 member.

29 Section 19. Section **34A-5-201** is enacted to read:

30 **Part 2. Genetic Testing Restrictions**

31 **34A-5-201. Title.**

1 This part is known as the "Genetic Testing Restrictions on Employers Act."

2 Section 20. Section **34A-5-202** is enacted to read:

3 **34A-5-202. Genetic testing restrictions.**

4 Except as provided in Section 26-40-107, an employer, as defined in Section 34A-2-103,
5 may not in connection with a hiring, promotion, retention, or any other employment-related
6 decision:

7 (1) require or request an individual or family member of the individual to take a genetic
8 test;

9 (2) make any inquiry to determine whether an individual or a blood relative of the
10 individual has taken or refused to take a genetic test, or what the results of any such test were;

11 (3) take into consideration the fact that a genetic test was taken or refused to be taken by
12 an individual or family member of the individual; or

13 (4) take into consideration any private genetic information about an individual or family
14 member.

15 Section 21. Section **63-2-202** is amended to read:

16 **63-2-202. Access to private, controlled, and protected documents.**

17 (1) Upon request, a governmental entity shall disclose a private record to:

18 (a) the subject of the record;

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

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

22 (d) any other individual who:

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

24 (ii) submits a notarized release from the subject of the record or his legal representative
25 dated no more than 90 days before the date the request is made; or

26 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
27 care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the
28 record is consistent with normal professional practice and medical ethics and Title 26, Chapter 40,
29 Genetic Testing Privacy Act; or

30 (e) any person to whom the record must be provided pursuant to court order as provided
31 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

2 (i) a physician, psychologist, certified social worker, insurance provider or agent, or a
3 government public health agency upon submission of a release from the subject of the record that
4 is dated no more than 90 days prior to the date the request is made and a signed acknowledgment
5 of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

6 (ii) any person to whom the record must be disclosed pursuant to court order as provided
7 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

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

14 (4) Upon request, a governmental entity shall disclose a protected record to:

15 (a) the person who submitted the record;

16 (b) any other individual who:

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

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

22 (c) any person to whom the record must be provided pursuant to a court order as provided
23 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

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

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

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

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

2 (c) the court has considered and, where appropriate, limited the requester's use and further
3 disclosure of the record in order to protect privacy interests in the case of private or controlled
4 records, business confidentiality interests in the case of records protected under Subsections
5 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected
6 records;

7 (d) to the extent the record is properly classified private, controlled, or protected, the
8 interests favoring access, considering limitations thereon, outweigh the interests favoring
9 restriction of access; and

10 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
11 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

16 (ii) determines that the proposed research is bona fide, and that the value of the research
17 outweighs the infringement upon personal privacy;

18 (iii) requires the researcher to assure the integrity, confidentiality, and security of the
19 records and requires the removal or destruction of the individual identifiers associated with the
20 records as soon as the purpose of the research project has been accomplished;

21 (iv) prohibits the researcher from disclosing the record in individually identifiable form,
22 except as provided in Subsection (8)(b), or from using the record for purposes other than the
23 research approved by the governmental entity; [and]

24 (v) secures from the researcher a written statement of his understanding of and agreement
25 to the conditions of this subsection and his understanding that violation of the terms of this
26 subsection may subject him to criminal prosecution under Section 63-2-801[-]; and

27 (vi) requires that the researcher complies with the provisions of Title 26, Chapter 40,
28 Genetic Testing Privacy Act, if the research involves genetic information.

29 (b) A researcher may disclose a record in individually identifiable form if the record is
30 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
31 or disclosure of the record in individually identifiable form will be made by the auditor or

1 evaluator except as provided by this section.

2 (c) A governmental entity may require indemnification as a condition of permitting
3 research under this subsection.

4 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may
5 disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to
6 persons other than those specified in this section.

7 (b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure
8 of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected
9 under Section 63-2-304 to persons other than those specified in this section.

10 (c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are
11 private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section
12 63-2-304 to persons other than those specified in this section.

13 Section 22. Section **63-2-302** is amended to read:

14 **63-2-302. Private records.**

15 (1) The following records are private:

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

18 (b) records containing data on individuals describing medical history, diagnosis, condition,
19 treatment, evaluation, genetic information, or similar medical data;

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

22 (d) records received or generated for a Senate or House Ethics Committee concerning any
23 alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if
24 the ethics committee meeting was closed to the public;

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

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

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

30 (B) would create a danger of depriving a person of a right to a fair proceeding or impartial
31 hearing;

- 1 (ii) after the meeting, if the meeting was closed to the public;
- 2 (f) records concerning a current or former employee of, or applicant for employment with,
- 3 a governmental entity that would disclose that individual's home address, home telephone number,
- 4 social security number, insurance coverage, marital status, or payroll deductions; and
- 5 (g) that part of a record indicating a person's social security number if provided under
- 6 Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6.
- 7 (2) The following records are private if properly classified by a governmental entity:
- 8 (a) records concerning a current or former employee of, or applicant for employment with
- 9 a governmental entity, including performance evaluations and personal status information such as
- 10 race, religion, or disabilities, but not including records that are public under Subsection
- 11 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);
- 12 (b) records describing an individual's finances, except that the following are public:
- 13 (i) records described in Subsection 63-2-301(1);
- 14 (ii) information provided to the governmental entity for the purpose of complying with a
- 15 financial assurance requirement; or
- 16 (iii) records that must be disclosed in accordance with another statute;
- 17 (c) records of independent state agencies if the disclosure of those records would conflict
- 18 with the fiduciary obligations of the agency;
- 19 (d) other records containing data on individuals the disclosure of which constitutes a
- 20 clearly unwarranted invasion of personal privacy; and
- 21 (e) records provided by the United States or by a government entity outside the state that
- 22 are given with the requirement that the records be managed as private records, if the providing
- 23 entity states in writing that the record would not be subject to public disclosure if retained by it.

24 Section 23. **Effective date.**

25 This act takes effect on July 1, 1998.

Legislative Review Note
as of 1-16-98 4:47 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel