

**PRIVATE RECORDS UNDER GOVERNMENT
RECORDS ACCESS AND MANAGEMENT ACT**

2001 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: Cindy Beshear

This act modifies the Government Records Access and Management Act (GRAMA).

GRAMA currently requires that certain information about a government employee be classified "private." This act authorizes government employees to give written notice of their status as government employees to other governmental entities in order to ensure that those entities classify personal information about government employees as "private." This act corrects cross-references contained in other sections of statute. This act removes any liability for damages that a government entity or government employee may have if they negligently disclose certain private records. This act repeals the predecessor bill passed in the 2001 Annual General Session and replaces it with amendments as described above. This act takes effect July 1, 2002. This act provides instructions for preparing the Utah Code database.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 26-1-17.5** [~~(Superseded 01/01/02)~~], as last amended by Chapter 312, Laws of Utah 1994
- 31A-23-202** [~~(Superseded 01/01/02)~~], as last amended by Chapter 116, Laws of Utah 2001
- 31A-25-202**, as last amended by Chapter 116, Laws of Utah 2001
- 31A-26-202** [~~(Superseded 01/01/02)~~], as last amended by Chapter 116, Laws of Utah 2001
- 58-1-301** [~~(Superseded 01/01/02)~~], as last amended by Chapter 232, Laws of Utah 1997
- 61-1-4** [~~(Superseded 01/01/02)~~], as last amended by Chapters 160 and 232, Laws of Utah 1997
- 61-2-6** [~~(Superseded 01/01/02)~~], as last amended by Chapter 232, Laws of Utah 1997
- 63-2-202** [~~(Superseded 01/01/02)~~], as last amended by Chapter 256, Laws of Utah 2001
- 63-2-206** [~~(Superseded 01/01/02)~~], as last amended by Chapter 229, Laws of Utah 2000

63-2-301 [~~(Superseded 01/01/02)~~], as last amended by Chapter 48, Laws of Utah 1999

63-2-302 [~~(Superseded 01/01/02)~~], as last amended by Chapter 48, Laws of Utah 1999

63-2-803 [~~(Superseded 01/01/02)~~], as last amended by Chapter 280, Laws of Utah 1992

76-10-1311 [~~(Superseded 01/01/02)~~], as enacted by Chapter 179, Laws of Utah 1993

This act repeals changes to Utah Law made by Chapter 74, Laws of Utah 2001

This act enacts uncodified material.

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

Section 1. Section **26-1-17.5** [~~(Superseded 01/01/02)~~] is amended to read:

26-1-17.5 [~~(Superseded 01/01/02)~~]. **Confidential records.**

(1) A record classified as confidential under this title shall remain confidential, and be released according to the provisions of this title, notwithstanding Section 63-2-909.

(2) In addition to those persons granted access to records described in Subsection 63-2-302(1)[~~(b)~~](a)(ii), immunization records may be shared among schools, school districts, and local and state health departments and the state Department of Human Services as necessary to assure compliance with Section 53A-11-301 and to prevent, investigate, and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health.

Section 2. Section **31A-23-202** [~~(Superseded 01/01/02)~~] is amended to read:

31A-23-202 [~~(Superseded 01/01/02)~~]. **Application for license.**

(1) (a) Subject to Subsection (2) the application for a resident license as an agent, a broker, or a consultant shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied; and

(b) the application for a nonresident license as an agent, a broker, or a consultant shall be:

(i) made on the uniform application; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied.

(2) An application described in Subsection (1) shall provide:

(a) information about the applicant's identity;

(b) the applicant's:

- (i) social security number; or
 - (ii) federal employer identification number;
 - (c) the applicant's personal history, experience, education, and business record;
 - (d) if the applicant is a natural person, whether the applicant is 18 years of age or older;
 - (e) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23-216; and
 - (f) any other information the commissioner reasonably requires.
- (3) The commissioner may require any documents reasonably necessary to verify the information contained in an application.
- (4) The following are private records under Subsection 63-2-302(1)[~~(g)~~](a)(vii) an applicant's:
- (a) social security number; or
 - (b) federal employer identification number.
- Section 3. Section **31A-25-202** is amended to read:
- 31A-25-202. Application for license.**
- (1) (a) An application for a license as a third party administrator shall be:
- (i) made to the commissioner on forms and in a manner the commissioner prescribes; and
 - (ii) accompanied by the applicable fee, which is not refundable if the application is denied.
- (b) The application for a license as a third party administrator shall:
- (i) state the applicant's:
 - (A) social security number; or
 - (B) federal employer identification number;
 - (ii) provide information about:
 - (A) the applicant's identity;
 - (B) the applicant's personal history, experience, education, and business record;
 - (C) if the applicant is a natural person, whether the applicant is 18 years of age or older; and
 - (D) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and
 - (iii) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) The following are private records under Subsection 63-2-302(1)~~(g)~~ (a)(vii):

- (a) an applicant's social security number; and
- (b) an applicant's federal employer identification number.

Section 4. Section **31A-26-202** [~~Superseded 01/01/02~~] is amended to read:

31A-26-202 [~~Superseded 01/01/02~~]. **Application for license.**

(1) (a) The application for a license as an independent adjuster or public adjuster shall be:

- (i) made to the commissioner on forms and in a manner the commissioner prescribes; and
- (ii) accompanied by the applicable fee, which is not refunded if the application is denied.

(b) The application shall provide:

(i) information about the identity;

(ii) the applicant's:

(A) social security number; or

(B) federal employer identification number;

(iii) the applicant's personal history, experience, education, and business record;

(iv) if the applicant is a natural person, whether the applicant is 18 years of age or older;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(vi) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) The following are private records under Subsection 63-2-302(1)~~(g)~~(a)(vii):

- (a) the applicant's social security number; and
- (b) the applicant's federal employer identification number.

Section 5. Section **58-1-301** [~~Superseded 01/01/02~~] is amended to read:

58-1-301 [~~Superseded 01/01/02~~]. **License application -- Licensing procedure.**

(1) (a) Each license applicant shall apply to the division in writing upon forms available from

the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's social security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's social security number is a private record under Subsection 63-2-302(1)~~(g)~~(a)(vii).

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

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

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

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

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

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

Section 6. Section **61-1-4** [~~Superseded 01/01/02~~] is amended to read:

61-1-4 [~~Superseded 01/01/02~~]. **Licensing and notice filing procedure.**

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

(b) (i) The application shall contain the applicant's social security number and whatever

information the division by rule requires concerning such matters as:

- (A) the applicant's form and place of organization;
 - (B) the applicant's proposed method of doing business;
 - (C) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;
 - (D) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
 - (E) the applicant's financial condition and history.
- (ii) An applicant's social security number is a private record under Subsection 63-2-302(1)~~(g)~~(a)(vii).

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

(d) Licenses or notice filings of broker-dealers, agents, investment advisers, and investment adviser representatives shall expire on December 31 of each year.

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

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

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

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

(2) Except with respect to federal covered advisers whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to acting as a federal covered adviser in this state, a notice filing consisting of such documents as have been

filed with the Securities and Exchange Commission as the division by rule or order may require.

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

(b) Any applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

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

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

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

(5) The division may by rule or order require a minimum capital for licensed broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over client funds or securities and those investment advisers who do not.

(6) (a) The division may by rule or order require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine their conditions.

(b) Any appropriate deposit of cash or securities may be accepted in lieu of any required bond.

(c) No bond may be required of any licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

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

(e) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought before the expiration of four years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever expires first.

Section 7. Section **61-2-6** [~~Superseded 01/01/02~~] is amended to read:

61-2-6 [~~Superseded 01/01/02~~]. **Licensing procedures and requirements.**

(1) The Real Estate Commission shall determine the qualifications and requirements of applicants for a principal broker, associate broker, or sales agent license. The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license. The division, with the concurrence of the commission, shall require an applicant for a sales agent license to complete an approved educational program not to exceed 90 hours, and an applicant for an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours. The hours required by this section mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours available to an individual is ten hours per day. The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles and practices, the provisions of this chapter, the rules established by the Real Estate Commission, and any other aspect of Utah real estate license law considered appropriate. Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state. The commission shall establish by rule the criteria by which it will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to

furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide his social security number, which is a private record under Subsection 63-2-302(1)[~~(g)~~] (a)(vii).

(3) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency. A nonresident associate broker or sales agent may become licensed in this state by conforming to all the provisions of this chapter except that of residency and by being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.

(4) An applicant who has had a real estate license revoked shall be relicensed as prescribed for an original application, but may not apply for a new license until at least five years after the revocation. In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of license.

Section 8. Section **63-2-202** [~~(Superseded 01/01/02)~~] is amended to read:

63-2-202 [~~(Superseded 01/01/02)~~]. **Access to private, controlled, and protected documents.**

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

(a) the subject of the record;

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

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

(d) any other individual who:

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

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

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

(e) any person to whom the record must be provided pursuant to court order as provided in

Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

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

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

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

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

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

(a) the person who submitted the record;

(b) any other individual who:

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

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

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

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

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

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

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

- (a) the record deals with a matter in controversy over which the court has jurisdiction;
- (b) the court has considered the merits of the request for access to the record; and
- (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;
- (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and
- (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

- (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
- (ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;
- (iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
- (iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and
- (v) secures from the researcher a written statement of his understanding of and agreement

to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

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

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

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

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

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

Section 9. Section **63-2-206** [~~Superseded 01/01/02~~] is amended to read:

63-2-206 [~~Superseded 01/01/02~~]. **Sharing records.**

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions;
or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection [~~63-2-206~~](1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity

shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)~~(c)~~(a)(iii).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 10. Section **63-2-301** [~~Superseded 01/01/02~~] is amended to read:

63-2-301 [~~Superseded 01/01/02~~]. **Records that must be disclosed.**

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

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses,

business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

- (i) undercover law enforcement personnel; and
- (ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
- (c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;
- (d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);
- (e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;
- (f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;
- (g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:
 - (i) titles or encumbrances to real property;
 - (ii) restrictions on the use of real property;
 - (iii) the capacity of persons to take or convey title to real property; or
 - (iv) tax status for real and personal property;
- (h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
- (i) data on individuals that would otherwise be private under this chapter if the individual who

is the subject of the record has given the governmental entity written permission to make the records available to the public;

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

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)~~(h)~~(a)(viii).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

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

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

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

(d) contracts entered into by a governmental entity;

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

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

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

(i) empirical data contained in drafts if:

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

and

- (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
- (j) drafts that are circulated to anyone other than:
 - (i) a governmental entity;
 - (ii) a political subdivision;
 - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
 - (iv) a government-managed corporation; or
 - (v) a contractor or private provider;
- (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
- (l) original data in a computer program if the governmental entity chooses not to disclose the program;
- (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
- (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
- (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
 - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - (ii) the charges on which the disciplinary action was based were sustained;
- (p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;
- (q) final audit reports;
- (r) occupational and professional licenses;
- (s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

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

Section 11. Section **63-2-302** [~~Superseded 01/01/02~~] is amended to read:

63-2-302 [~~Superseded 01/01/02~~]. **Private records.**

(1) (a) The following records are private:

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

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

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

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

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

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

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

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

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

~~(f)~~ (vi) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone

number, social security number, insurance coverage, marital status, or payroll deductions;

~~[(g)]~~ (vii) that part of a record indicating a person's social security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; and

~~[(h)]~~ (viii) that part of a voter registration record identifying a voter's driver license or identification card number, social security number, or last four digits of the social security number.

(b) For records declared private under Subsection (1)(a)(vi), a current or former employee of a government entity may:

(i) give actual written notice of the employee's status as a government employee to each agency of a government entity holding records that would disclose the employee's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions; and

(ii) in the notice:

(A) provide evidence of qualifying employment;

(B) request assistance by the agency to identify the records containing information in Subsection (1)(b)(i);

(C) designate each specific record that the applicant desires to be classified as private; and

(D) affirmatively request that the government entity holding those records classify them as private.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection ~~[63-2-302](1)(b)~~(a)(ii);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 12. Section **63-2-803** [~~Superseded 01/01/02~~] is amended to read:

63-2-803 [~~Superseded 01/01/02~~]. **No liability for certain decisions of a governmental entity or a political subdivision.**

(1) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages arising from the negligent

disclosure of records classified as private under Subsection 63-2-302(1)(a)(vi) unless:

- (a) the disclosure was of employment records maintained by the governmental entity; or
- (b) the disclosure was of nonemployment records and the current or former government employee had filed the notice required by Subsection 63-2-302(1)(b).

Section 13. Section **76-10-1311** [~~Superseded 01/01/02~~] is amended to read:

76-10-1311 [~~Superseded 01/01/02~~]. **Mandatory testing -- Retention of offender medical file -- Civil liability.**

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

- (a) the HIV infection test results;
- (b) a copy of the written notice as provided in Section 76-10-1312;
- (c) photographic identification; and
- (d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63-2-302(1)[~~(b)~~](a)(ii) or a controlled record pursuant to Section 63-2-303.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of

Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.

(10) When the medical file is released as provided in Section 63-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 14. Effective date.

This act takes effect on July 1, 2002.

Section 15. Instructions for preparing the Utah Code database.

If this bill passes, it is the intent of the Legislature that:

(1) this bill be read as if the amendments contained in H.B. 88, Chapter 74, Laws of Utah 2001 have not been given effect; and

(2) the Office of Legislative Research and General Counsel prepare the Utah Code database so that the provisions of this bill supersede the amendments contained in H.B. 88, Chapter 74, Laws of Utah 2001.