

**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**26-1-17.5** [~~Superseded 01/01/02~~], as last amended by Chapter 312, Laws of Utah 1994

**31A-23-202** [~~Superseded 01/01/02~~], as last amended by Chapter 116, Laws of Utah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**31A-26-202** [~~Superseded 01/01/02~~], as last amended by Chapter 116, Laws of Utah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**58-1-301** [~~Superseded 01/01/02~~], as last amended by Chapter 232, Laws of Utah 1997

**61-1-4** [~~Superseded 01/01/02~~], as last amended by Chapters 160 and 232, Laws of Utah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



- 28            **61-2-6** [~~Superseded 01/01/02~~], as last amended by Chapter 232, Laws of Utah 1997
- 29            **63-2-202** [~~Superseded 01/01/02~~], as last amended by Chapter 256, Laws of Utah 2001
- 30            **63-2-206** [~~Superseded 01/01/02~~], as last amended by Chapter 229, Laws of Utah 2000
- 31            **63-2-301** [~~Superseded 01/01/02~~], as last amended by Chapter 48, Laws of Utah 1999
- 32            **63-2-302** [~~Superseded 01/01/02~~], as last amended by Chapter 48, Laws of Utah 1999
- 33            **63-2-803** [~~Superseded 01/01/02~~], as last amended by Chapter 280, Laws of Utah 1992
- 34            **76-10-1311** [~~Superseded 01/01/02~~], as enacted by Chapter 179, Laws of Utah 1993

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

36 This act enacts uncodified material.

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

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 Section **26-1-17.5** [~~Superseded 01/01/02~~] is amended to read:

39            **26-1-17.5** [~~Superseded 01/01/02~~]. **Confidential records.**

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

42            (2) In addition to those persons granted access to records described in Subsection  
43 63-2-302(1)[~~(b)~~](a)(ii), immunization records may be shared among schools, school districts, and  
44 local and state health departments and the state Department of Human Services as necessary to  
45 assure compliance with Section 53A-11-301 and to prevent, investigate, and control the causes of  
46 epidemic, infectious, communicable, and other diseases affecting the public health.

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

48            **31A-23-202** [~~Superseded 01/01/02~~]. **Application for license.**

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

- 51            (i) made to the commissioner on forms and in a manner the commissioner prescribes; and
- 52            (ii) accompanied by an applicable fee that is not refunded if the application is denied; and
- 53            (b) the application for a nonresident license as an agent, a broker, or a consultant shall be:
  - 54            (i) made on the uniform application; and
  - 55            (ii) accompanied by an applicable fee that is not refunded if the application is denied.

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

- 57            (a) information about the applicant's identity;
- 58            (b) the applicant's:

- 59 (i) social security number; or
- 60 (ii) federal employer identification number;
- 61 (c) the applicant's personal history, experience, education, and business record;
- 62 (d) if the applicant is a natural person, whether the applicant is 18 years of age or older;
- 63 (e) whether the applicant has committed an act that is a ground for denial, suspension, or
- 64 revocation as set forth in Section 31A-23-216; and
- 65 (f) any other information the commissioner reasonably requires.

66 (3) The commissioner may require any documents reasonably necessary to verify the  
67 information contained in an application.

68 (4) The following are private records under Subsection 63-2-302(1)~~(g)~~(a)(vii) an  
69 applicant's:

- 70 (a) social security number; or
- 71 (b) federal employer identification number.

72 Section 3. Section **31A-25-202** is amended to read:

73 **31A-25-202. Application for license.**

74 (1) (a) An application for a license as a third party administrator shall be:

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

77 (b) The application for a license as a third party administrator shall:

78 (i) state the applicant's:

- 79 (A) social security number; or
- 80 (B) federal employer identification number;

81 (ii) provide information about:

- 82 (A) the applicant's identity;
- 83 (B) the applicant's personal history, experience, education, and business record;
- 84 (C) if the applicant is a natural person, whether the applicant is 18 years of age or older;

85 and

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

88 (iii) any other information as the commissioner reasonably requires.

89 (2) The commissioner may require documents reasonably necessary to verify the

90 information contained in the application.

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

92 (a) an applicant's social security number; and

93 (b) an applicant's federal employer identification number.

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

95 **31A-26-202** [~~Superseded 01/01/02~~]. **Application for license.**

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

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

98 (ii) accompanied by the applicable fee, which is not refunded if the application is denied.

99 (b) The application shall provide:

100 (i) information about the identity;

101 (ii) the applicant's:

102 (A) social security number; or

103 (B) federal employer identification number;

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

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

106 (v) whether the applicant has committed an act that is a ground for denial, suspension, or

107 revocation as set forth in Section 31A-25-208; and

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

109 (2) The commissioner may require documents reasonably necessary to verify the

110 information contained in the application.

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

112 (a) the applicant's social security number; and

113 (b) the applicant's federal employer identification number.

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

115 **58-1-301** [~~Superseded 01/01/02~~]. **License application -- Licensing procedure.**

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

117 from the division. Each completed application shall contain documentation of the particular

118 qualifications required of the applicant, shall include the applicant's social security number, shall

119 be verified by the applicant, and shall be accompanied by the appropriate fees.

120 (b) An applicant's social security number is a private record under Subsection

121 63-2-302(1)~~(g)~~(a)(vii).

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

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

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

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

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

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

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

140 **61-1-4** [~~Superseded 01/01/02~~]. **Licensing and notice filing procedure.**

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

144 (b) (i) The application shall contain the applicant's social security number and whatever  
145 information the division by rule requires concerning such matters as:

146 (A) the applicant's form and place of organization;

147 (B) the applicant's proposed method of doing business;

148 (C) the qualifications and business history of the applicant; in the case of a broker-dealer  
149 or investment adviser, the qualifications and business history of any partner, officer, or director,  
150 any person occupying a similar status or performing similar functions, or any person directly or  
151 indirectly controlling the broker-dealer or investment adviser;

152 (D) any injunction or administrative order or conviction of a misdemeanor involving a  
153 security or any aspect of the securities business and any conviction of a felony; and

154 (E) the applicant's financial condition and history.

155 (ii) An applicant's social security number is a private record under Subsection  
156 63-2-302(1)~~(g)~~(a)(vii).

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

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

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

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

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

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

170 (2) Except with respect to federal covered advisers whose only clients are those described  
171 in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to  
172 acting as a federal covered adviser in this state, a notice filing consisting of such documents as  
173 have been filed with the Securities and Exchange Commission as the division by rule or order may  
174 require.

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

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

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

182 (d) If the license or renewal is not granted or the application is withdrawn, the division

183 shall retain the fee.

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

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

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

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

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

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

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

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

210 **61-2-6** [~~Superseded 01/01/02~~]. **Licensing procedures and requirements.**

211 (1) The Real Estate Commission shall determine the qualifications and requirements of  
212 applicants for a principal broker, associate broker, or sales agent license. The division, with the  
213 concurrence of the commission, shall require and pass upon proof necessary to determine the

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

229 (2) (a) The division, with the concurrence of the commission, may require an applicant to  
230 furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's  
231 reputation and competency as set forth by rule.

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

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

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

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

244 **63-2-202** [~~(Superseded 01/01/02)~~]. **Access to private, controlled, and protected**

245 **documents.**

- 246 (1) Upon request, a governmental entity shall disclose a private record to:
- 247 (a) the subject of the record;
- 248 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
- 249 record;
- 250 (c) the legal guardian of a legally incapacitated individual who is the subject of the record;
- 251 (d) any other individual who:
- 252 (i) has a power of attorney from the subject of the record;
- 253 (ii) submits a notarized release from the subject of the record or his legal representative
- 254 dated no more than 90 days before the date the request is made; or
- 255 (iii) if the record is a medical record described in Subsection 63-2-302(1)(~~b~~)(a)(ii), is a
- 256 health care provider, as defined in Section 26-33a-102, if releasing the record or information in the
- 257 record is consistent with normal professional practice and medical ethics; or
- 258 (e) any person to whom the record must be provided pursuant to court order as provided
- 259 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- 260 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- 261 (i) a physician, psychologist, certified social worker, insurance provider or agent, or a
- 262 government public health agency upon submission of a release from the subject of the record that
- 263 is dated no more than 90 days prior to the date the request is made and a signed acknowledgment
- 264 of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
- 265 (ii) any person to whom the record must be disclosed pursuant to court order as provided
- 266 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.
- 267 (b) A person who receives a record from a governmental entity in accordance with
- 268 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
- 269 including the subject of the record.
- 270 (3) If there is more than one subject of a private or controlled record, the portion of the
- 271 record that pertains to another subject shall be segregated from the portion that the requester is
- 272 entitled to inspect.
- 273 (4) Upon request, a governmental entity shall disclose a protected record to:
- 274 (a) the person who submitted the record;
- 275 (b) any other individual who:

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

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

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

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

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

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

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

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

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

293 (c) the court has considered and, where appropriate, limited the requester's use and further  
294 disclosure of the record in order to protect privacy interests in the case of private or controlled  
295 records, business confidentiality interests in the case of records protected under Subsections  
296 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected  
297 records;

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

301 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
302 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

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

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

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

315 (v) secures from the researcher a written statement of his understanding of and agreement  
316 to the conditions of this subsection and his understanding that violation of the terms of this  
317 subsection may subject him to criminal prosecution under Section 63-2-801.

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

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

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

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

330 (c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are  
331 private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section  
332 63-2-304 to persons other than those specified in this section.

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

334 **63-2-206** [~~Superseded 01/01/02~~]. **Sharing records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

368 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection

369 63-2-304(4).

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

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

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

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

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

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

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

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

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

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

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

396 **63-2-301 [(Superseded 01/01/02)]. Records that must be disclosed.**

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

- 400 (a) laws;
- 401 (b) names, gender, gross compensation, job titles, job descriptions, business addresses,  
402 business telephone numbers, number of hours worked per pay period, dates of employment, and  
403 relevant education, previous employment, and similar job qualifications of the governmental  
404 entity's former and present employees and officers excluding:
  - 405 (i) undercover law enforcement personnel; and
  - 406 (ii) investigative personnel if disclosure could reasonably be expected to impair the  
407 effectiveness of investigations or endanger any individual's safety;
  - 408 (c) final opinions, including concurring and dissenting opinions, and orders that are made  
409 by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if  
410 the proceedings were properly closed to the public, the opinion and order may be withheld to the  
411 extent that they contain information that is private, controlled, or protected;
  - 412 (d) final interpretations of statutes or rules by a governmental entity unless classified as  
413 protected as provided in Subsections 63-2-304(15), (16), and (17);
  - 414 (e) information contained in or compiled from a transcript, minutes, or report of the open  
415 portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public  
416 Meetings, including the records of all votes of each member of the governmental entity;
  - 417 (f) judicial records unless a court orders the records to be restricted under the rules of civil  
418 or criminal procedure or unless the records are private under this chapter;
  - 419 (g) records filed with or maintained by county recorders, clerks, treasurers, surveyors,  
420 zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional  
421 Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights,  
422 or other governmental entities that give public notice of:
    - 423 (i) titles or encumbrances to real property;
    - 424 (ii) restrictions on the use of real property;
    - 425 (iii) the capacity of persons to take or convey title to real property; or
    - 426 (iv) tax status for real and personal property;
  - 427 (h) records of the Department of Commerce that evidence incorporations, mergers, name  
428 changes, and uniform commercial code filings;
    - 429 (i) data on individuals that would otherwise be private under this chapter if the individual  
430 who is the subject of the record has given the governmental entity written permission to make the

431 records available to the public;

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

434 (k) summary data; and

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

437 (2) The following records are normally public, but to the extent that a record is expressly  
438 exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section  
439 63-2-302, 63-2-303, or 63-2-304:

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

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

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

445 (d) contracts entered into by a governmental entity;

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

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

451 (g) chronological logs and initial contact reports;

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

455 (i) empirical data contained in drafts if:

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

457 and

458 (ii) the governmental entity is given a reasonable opportunity to correct any errors or make  
459 nonsubstantive changes before release;

460 (j) drafts that are circulated to anyone other than:

461 (i) a governmental entity;

- 462 (ii) a political subdivision;
- 463 (iii) a federal agency if the governmental entity and the federal agency are jointly  
464 responsible for implementation of a program or project that has been legislatively approved;
- 465 (iv) a government-managed corporation; or
- 466 (v) a contractor or private provider;
- 467 (k) drafts that have never been finalized but were relied upon by the governmental entity  
468 in carrying out action or policy;
- 469 (l) original data in a computer program if the governmental entity chooses not to disclose  
470 the program;
- 471 (m) arrest warrants after issuance, except that, for good cause, a court may order restricted  
472 access to arrest warrants prior to service;
- 473 (n) search warrants after execution and filing of the return, except that a court, for good  
474 cause, may order restricted access to search warrants prior to trial;
- 475 (o) records that would disclose information relating to formal charges or disciplinary  
476 actions against a past or present governmental entity employee if:
  - 477 (i) the disciplinary action has been completed and all time periods for administrative  
478 appeal have expired; and
  - 479 (ii) the charges on which the disciplinary action was based were sustained;
- 480 (p) records maintained by the Division of Forestry, Fire and State Lands, the School and  
481 Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence  
482 mineral production on government lands;
- 483 (q) final audit reports;
- 484 (r) occupational and professional licenses;
- 485 (s) business licenses; and
- 486 (t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar  
487 records used to initiate proceedings for discipline or sanctions against persons regulated by a  
488 governmental entity, but not including records that initiate employee discipline.
- 489 (3) The list of public records in this section is not exhaustive and should not be used to  
490 limit access to records.

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

492 **63-2-302** [~~Superseded 01/01/02~~]. **Private records.**

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

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

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

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

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

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

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

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

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

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

512 [~~(f)~~] (vi) records concerning a current or former employee of, or applicant for employment  
513 with, a governmental entity that would disclose that individual's home address, home telephone  
514 number, social security number, insurance coverage, marital status, or payroll deductions;

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

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

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

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

524 deductions; and

525 (ii) in the notice:

526 (A) provide evidence of qualifying employment;

527 (B) request assistance by the agency to identify the records containing information in

528 Subsection (1)(b)(i);

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

530 (D) affirmatively request that the government entity holding those records classify them

531 as private.

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

533 (a) records concerning a current or former employee of, or applicant for employment with

534 a governmental entity, including performance evaluations and personal status information such as

535 race, religion, or disabilities, but not including records that are public under Subsection

536 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection [~~63-2-302~~](1)(~~b~~)(a)(ii);

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

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

539 (ii) information provided to the governmental entity for the purpose of complying with a

540 financial assurance requirement; or

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

542 (c) records of independent state agencies if the disclosure of those records would conflict

543 with the fiduciary obligations of the agency;

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

546 (e) records provided by the United States or by a government entity outside the state that

547 are given with the requirement that the records be managed as private records, if the providing

548 entity states in writing that the record would not be subject to public disclosure if retained by it.

549 (3) (a) As used in this Subsection (3), "medical records" means medical reports, records,

550 statements, history, diagnosis, condition, treatment, and evaluation.

551 (b) Medical records in the possession of the University of Utah Hospital, its clinics,

552 doctors, or affiliated entities are not private records or controlled records under Section 63-2-303

553 when the records are sought:

554 (i) in connection with any legal or administrative proceeding in which the patient's

555 physical, mental, or emotional condition is an element of any claim or defense; or

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

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

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

562 ~~63-2-803~~ [(Superseded 01/01/02)]. **No liability for certain decisions of a governmental**  
563 **entity or a political subdivision.**

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

568 (2) Neither the governmental entity or political subdivision, nor any officer or employee  
569 of the governmental entity or political subdivision, is liable for damages arising from the negligent  
570 disclosure of records classified as private under Subsection 63-2-302(1)(a)(vi) unless:

571 (a) the disclosure was of employment records maintained by the governmental entity; or

572 (b) the disclosure was of nonemployment records and the current or former government  
573 employee had filed the notice required by Subsection 63-2-302(1)(b).

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

575 ~~76-10-1311~~ [(Superseded 01/01/02)]. **Mandatory testing -- Retention of offender**  
576 **medical file -- Civil liability.**

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

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

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

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

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

590 (a) the HIV infection test results;

591 (b) a copy of the written notice as provided in Section 76-10-1312;

592 (c) photographic identification; and

593 (d) fingerprint identification.

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

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

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

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

603 (c) Designated officials may release information identifying an offender under Section  
604 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection  
605 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

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

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

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

615 Section 14. **Effective date.**

616 This act takes effect on July 1, 2002.

617 Section 15. **Instructions for preparing the Utah Code database.**

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

619 (1) this bill be read as if the amendments contained in H.B. 88, Chapter 74, Laws of Utah  
620 2001 have not been given effect; and

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

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**Legislative Review Note**

**as of 6-7-01 2:58 PM**

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

**Office of Legislative Research and General Counsel**