

RACIAL PROFILING

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

This act modifies the Uniform Driver License Act and related provisions regarding traffic law enforcement. The act requires race information to be provided on the driver license application and the state identification card application. The act requires the Driver License Division to establish a database to monitor traffic stops by peace officers and provides the Commission on Criminal and Juvenile Justice access to the information for evaluation. The act requires law enforcement agencies in the state to establish, on or before January 1, 2003, written policies prohibiting unconstitutional traffic enforcement. This act takes effect on July 1, 2002 and provides a repeal date of July 1, 2006 for certain sections of the act.

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

AMENDS:

10-3-913, as last amended by Chapter 44, Laws of Utah 1990

10-3-918, as last amended by Chapter 178, Laws of Utah 2001

17-22-2, as last amended by Chapter 133, Laws of Utah 2000

53-1-108, as last amended by Chapter 47, Laws of Utah 2001

53-3-104, as last amended by Chapter 85, Laws of Utah 2001

53-3-205, as last amended by Chapters 85 and 117, Laws of Utah 2001

53-3-804, as last amended by Chapters 117 and 125, Laws of Utah 2001

53-8-104, as last amended by Chapters 236 and 396, Laws of Utah 1998

63-55b-153, as last amended by Chapters 219 and 234, Laws of Utah 2000

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

Section 1. Section **10-3-913** is amended to read:

10-3-913. Authority of chief of police.

(1) The chief of police has the same authority as the sheriff within the boundaries of the



28 municipality of appointment. The chief has authority to:

- 29 (a) suppress riots, disturbances, and breaches of the peace;
- 30 (b) apprehend all persons violating state laws or city ordinances;
- 31 (c) diligently discharge his duties and enforce all ordinances of the city to preserve the
- 32 peace, good order, and protection of the rights and property of all persons; and
- 33 (d) attend the municipal justice court located within the city when required, provide
- 34 security for the court, and obey its orders and directions.

35 (2) This section is not a limitation of a police chief's statewide authority as otherwise
36 provided by law.

37 (3) The chief of police shall, on or before January 1, 2003, adopt a written policy that
38 prohibits the stopping, detention, or search of any person when the action is solely motivated by
39 considerations of race, color, ethnicity, age, or gender.

40 Section 2. Section **10-3-918** is amended to read:

41 **10-3-918. Chief of police or marshal in third class cities and towns.**

42 The chief of police or marshal in a city of the third class or town:

- 43 (1) shall:
- 44 (a) exercise and perform the duties that are prescribed by the legislative body; [~~and~~]
- 45 (b) be under the direction, control, and supervision of the person or body that appointed
- 46 the chief or marshal; and

47 (c) on or before January 1, 2003, adopt a written policy that prohibits the stopping,
48 detention, or search of any person when the action is solely motivated by considerations of race,
49 color, ethnicity, age, or gender; and

50 (2) may, with the consent of the person or body that appointed the chief or marshal,
51 appoint assistants to the chief of police or marshal.

52 Section 3. Section **17-22-2** is amended to read:

53 **17-22-2. Sheriff -- General duties.**

- 54 (1) The sheriff shall:
- 55 (a) preserve the peace;
- 56 (b) make all lawful arrests;
- 57 (c) attend in person or by deputy the Supreme Court and the Court of Appeals when
- 58 required or when the court is held within his county, all courts of record, and court commissioner

59 and referee sessions held within his county, obey their lawful orders and directions, and comply
60 with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

61 (d) upon request of the juvenile court, aid the court in maintaining order during hearings
62 and transport a minor to and from youth corrections facilities, other institutions, or other
63 designated places;

64 (e) attend county justice courts if the judge finds that the matter before the court requires
65 the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or
66 for the custody of jurors;

67 (f) command the aid of as many inhabitants of his county as he considers necessary in the
68 execution of these duties;

69 (g) take charge of and keep the county jail and the jail prisoners;

70 (h) receive and safely keep all persons committed to his custody, file and preserve the
71 commitments of those persons, and record the name, age, place of birth, and description of each
72 person committed;

73 (i) release on the record all attachments of real property when the attachment he receives
74 has been released or discharged;

75 (j) endorse on all process and notices the year, month, day, hour, and minute of reception,
76 and, upon payment of fees, issue a certificate to the person delivering process or notice showing
77 the names of the parties, title of paper, and the time of receipt;

78 (k) serve all process and notices as prescribed by law;

79 (l) if he makes service of process or notice, certify on the process or notices the manner,
80 time, and place of service, or, if he fails to make service, certify the reason upon the process or
81 notice, and return them without delay;

82 (m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public
83 land within his county;

84 (n) perform as required by any contracts between the county and private contractors for
85 management, maintenance, operation, and construction of county jails entered into under the
86 authority of Section 17-53-311;

87 (o) manage search and rescue services in his county; [~~and~~]

88 (p) on or before January 1, 2003, adopt a written policy that prohibits the stopping,
89 detention, or search of any person when the action is solely motivated by considerations of race,

90 color, ethnicity, age, or gender; and

91 [~~p~~] (q) perform any other duties that are required by law.

92 (2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other
93 subsection under Subsection (1) is a class A misdemeanor.

94 Section 4. Section **53-1-108** is amended to read:

95 **53-1-108. Commissioner's powers and duties.**

96 (1) In addition to the responsibilities contained in this title, the commissioner shall:

97 (a) administer and enforce this title and Title 41, Chapter 12a, Financial Responsibility of
98 Motor Vehicle Owners and Operators Act;

99 (b) appoint deputies, inspectors, examiners, clerical workers, and other employees as
100 required to properly discharge the duties of the department;

101 (c) make rules:

102 (i) governing emergency use of signal lights on private vehicles; and

103 (ii) allowing privately owned vehicles to be designated for part-time emergency use, as
104 provided in Section 41-6-1.5;

105 (d) set standards for safety belt systems, as required by Section 41-6-182;

106 (e) serve as the chairman of the Disaster Emergency Advisory Council, as required by
107 Section 63-5-4; [~~and~~]

108 (f) designate vehicles as "authorized emergency vehicles," as required by Section 41-6-1[-];
109 and

110 (g) on or before January 1, 2003, adopt a written policy that prohibits the stopping,
111 detention, or search of any person when the action is solely motivated by considerations of race,
112 color, ethnicity, age, or gender.

113 (2) The commissioner may:

114 (a) subject to the approval of the governor, establish division headquarters at various
115 places in the state;

116 (b) issue to a special agent a certificate of authority to act as a peace officer and revoke that
117 authority for cause, as authorized in Section 56-1-21.5;

118 (c) create specialized units within the commissioner's office for conducting internal affairs
119 and aircraft operations as necessary to protect the public safety;

120 (d) cooperate with any recognized agency in the education of the public in safety and crime

- 121 prevention and participate in public or private partnerships, subject to Subsection (3);
- 122 (e) cooperate in applying for and distributing highway safety program funds; and
- 123 (f) receive and distribute federal funding to further the objectives of highway safety in
- 124 compliance with the Federal Assistance Management Program Act.
- 125 (3) (a) Money may not be expended under Subsection (2)(d) for public safety education
- 126 unless it is specifically appropriated by the Legislature for that purpose.
- 127 (b) Any recognized agency receiving state money for public safety shall file with the
- 128 auditor of the state an itemized statement of all its receipts and expenditures.
- 129 Section 5. Section **53-3-104** is amended to read:
- 130 **53-3-104. Division duties.**
- 131 The division shall:
- 132 (1) make rules:
- 133 (a) for examining applicants for a license, as necessary for the safety and welfare of the
- 134 traveling public;
- 135 (b) regarding the restrictions to be imposed on a person driving a motor vehicle with a
- 136 temporary learner permit; and
- 137 (c) for exemptions from licensing requirements as authorized in this chapter;
- 138 (2) examine each applicant according to the class of license applied for;
- 139 (3) license motor vehicle drivers;
- 140 (4) file every application for a license received by it and shall maintain indices containing:
- 141 (a) all applications denied and the reason each was denied;
- 142 (b) all applications granted; and
- 143 (c) the name of every licensee whose license has been suspended, disqualified, or revoked
- 144 by the division and the reasons for the action;
- 145 (5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with this
- 146 chapter;
- 147 (6) file all accident reports and abstracts of court records of convictions received by it
- 148 under state law;
- 149 (7) maintain a record of each licensee showing his convictions and the traffic accidents in
- 150 which he has been involved where a conviction has resulted;
- 151 (8) consider the record of a licensee upon an application for renewal of a license and at

152 other appropriate times;

153 (9) search the license files, compile, and furnish a report on the driving record of any
154 person licensed in the state in accordance with Section 53-3-109;

155 (10) develop and implement a record system as required by Section 41-6-48.5;

156 (11) in accordance with Section 53A-13-208, establish:

157 (a) procedures and standards to certify teachers of driver education classes to administer
158 knowledge and skills tests;

159 (b) minimal standards for the tests; and

160 (c) procedures to enable school districts to administer or process any tests for students to
161 receive a class D operator's license;

162 (12) in accordance with Section 53-3-510, establish:

163 (a) procedures and standards to certify licensed instructors of commercial driver training
164 school courses to administer the skills test;

165 (b) minimal standards for the test; and

166 (c) procedures to enable licensed commercial driver training schools to administer or
167 process skills tests for students to receive a class D operator's license; ~~and~~

168 (13) provide administrative support to the Driver License Medical Advisory Board created
169 in Section 53-3-303[-]; and

170 (14) (a) maintain a database of the information listed below regarding each driver license
171 or state identification card status check made by a law enforcement officer:

172 (i) the agency employing the law enforcement officer;

173 (ii) the name of the law enforcement officer or the identifying number the agency has
174 assigned to the law enforcement officer;

175 (iii) the purpose of the law enforcement officer's status check, including but not limited
176 to a traffic stop or a pedestrian stop; and

177 (iv) the race of the individual regarding whom the status check is made, based on the
178 information provided through the application process under Section 53-3-205 or 53-3-804; and

179 (b) provide access to the database created in this Subsection (14) to the Commission on
180 Criminal and Juvenile Justice for the purpose of:

181 (i) evaluating the data;

182 (ii) evaluating the effectiveness of the data collection process; and

183 (iii) reporting and making recommendations to the Legislature.

184 Section 6. Section **53-3-205** is amended to read:

185 **53-3-205. Application for license or endorsement -- Fee required -- Tests --**

186 **Expiration dates of licenses and endorsements -- Information required -- Previous licenses**

187 **surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required**

188 **-- License agreement.**

189 (1) An application for any original license, provisional license, or endorsement shall be:

190 (a) made upon a form furnished by the division; and

191 (b) accompanied by a nonrefundable fee set under Section 53-3-105.

192 (2) An application and fee for an original class D license entitle the applicant to:

193 (a) not more than three attempts to pass both the knowledge and skills tests for a class D
194 license within six months of the date of the application;

195 (b) a learner permit if needed after the knowledge test is passed; and

196 (c) an original class D license and license certificate after all tests are passed.

197 (3) An application and fee for an original class M license entitle the applicant to:

198 (a) not more than three attempts to pass both the knowledge and skills tests for a class M
199 license within six months of the date of the application;

200 (b) a learner permit if needed after the knowledge test is passed; and

201 (c) an original class M license and license certificate after all tests are passed.

202 (4) An application and fee for a motorcycle or taxicab endorsement entitle the applicant
203 to:

204 (a) not more than three attempts to pass both the knowledge and skills tests within six
205 months of the date of the application;

206 (b) a motorcycle learner permit if needed after the motorcycle knowledge test is passed;

207 and

208 (c) a motorcycle or taxicab endorsement when all tests are passed.

209 (5) An application and fees for a commercial class A, B, or C license entitle the applicant
210 to:

211 (a) not more than two attempts to pass a knowledge test and not more than two attempts
212 to pass a skills test within six months of the date of the application;

213 (b) a commercial driver instruction permit if needed after the knowledge test is passed; and

214 (c) an original commercial class A, B, or C license and license certificate when all
215 applicable tests are passed.

216 (6) An application and fee for a CDL endorsement entitle the applicant to:

217 (a) not more than two attempts to pass a knowledge test and not more than two attempts
218 to pass a skills test within six months of the date of the application; and

219 (b) a CDL endorsement when all tests are passed.

220 (7) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test
221 within the number of attempts provided in Subsection (5) or (6), each test may be taken two
222 additional times within the six months for the fee provided in Section 53-3-105.

223 (8) (a) An original license expires on the birth date of the applicant in the fifth year
224 following the year the license certificate was issued.

225 (b) A renewal or an extension to a license expires on the birth date of the licensee in the
226 fifth year following the expiration date of the license certificate renewed or extended.

227 (c) A duplicate license expires on the same date as the last license certificate issued.

228 (d) An endorsement to a license expires on the same date as the license certificate
229 regardless of the date the endorsement was granted.

230 (e) A license and any endorsement to the license held by a person ordered to active duty
231 and stationed outside Utah in any of the armed forces of the United States, which expires during
232 the time period the person is stationed outside of the state, is valid until 90 days after the person
233 has been discharged or has left the service, unless the license is suspended, disqualified, denied,
234 or has been cancelled or revoked by the division, or the licensee updates the information or
235 photograph on the license certificate.

236 (9) (a) In addition to the information required by Title 63, Chapter 46b, Administrative
237 Procedures Act, for requests for agency action, each application shall:

238 (i) state the:

239 (A) full legal name[;];

240 (B) birth date[;];

241 (C) sex[;];

242 (D) between July 1, 2002 and July 1, 2006, race in accordance with the categories
243 established by the United States Census Bureau;

244 (E) Social Security number or temporary identification number (ITIN) issued by the

245 Internal Revenue Service for a person who does not qualify for a Social Security number[;]; and

246 (F) residence address of the applicant;

247 (ii) briefly describe the applicant;

248 (iii) state whether the applicant has previously been licensed to drive a motor vehicle and,
249 if so, when and by what state or country;

250 (iv) state whether the applicant has ever had any license suspended, cancelled, revoked,
251 disqualified, or denied in the last six years, or whether the applicant has ever had any license
252 application refused, and if so, the date of and reason for the suspension, cancellation, revocation,
253 disqualification, denial, or refusal;

254 (v) state whether the applicant intends to make an anatomical gift under Title 26, Chapter
255 28, Uniform Anatomical Gift Act, in compliance with Subsection (16);

256 (vi) provide all other information the division requires; and

257 (vii) be signed which may include electronic signatures as defined in Section 46-4-102.

258 (b) An applicant's Social Security number or temporary identification number (ITIN) shall
259 be maintained on the computerized records of the division.

260 (10) The division shall require proof of every applicant's name, birthdate, and birthplace
261 by at least one of the following means:

262 (a) current license certificate;

263 (b) birth certificate;

264 (c) Selective Service registration; or

265 (d) other proof, including church records, family Bible notations, school records, or other
266 evidence considered acceptable by the division.

267 (11) When an applicant receives a license in another class, all previous license certificates
268 shall be surrendered and canceled. However, a disqualified commercial license may not be
269 canceled unless it expires before the new license certificate is issued.

270 (12) (a) When an application is received from a person previously licensed in another state
271 to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

272 (b) When received, the driver's record becomes part of the driver's record in this state with
273 the same effect as though entered originally on the driver's record in this state.

274 (13) An application for reinstatement of a license after the suspension, cancellation,
275 disqualification, denial, or revocation of a previous license shall be accompanied by the additional

276 fee or fees specified in Section 53-3-105.

277 (14) A person who has an appointment with the division for testing and fails to keep the
278 appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under
279 Section 53-3-105.

280 (15) A person who applies for an original license or renewal of a license agrees that the
281 person's license is subject to any suspension or revocation authorized under this title or Title 41,
282 Motor Vehicles.

283 (16) (a) The indication of intent under Subsection (9)(a)(v) shall be authenticated by the
284 licensee in accordance with division rule.

285 (b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and Management
286 Act, the division may, upon request, release to an organ procurement organization, as defined in
287 Section 26-28-2, the names and addresses of all persons who under Subsection (9)(a)(v) indicate
288 that they intend to make an anatomical gift.

289 (ii) An organ procurement organization may use released information only to:

290 (A) obtain additional information for an anatomical gift registry; and

291 (B) inform licensees of anatomical gift options, procedures, and benefits.

292 (17) The division and its employees are not liable, as a result of false or inaccurate
293 information provided under Subsection (9)(a)(v), for direct or indirect:

294 (a) loss;

295 (b) detriment; or

296 (c) injury.

297 Section 7. Section **53-3-804** is amended to read:

298 **53-3-804. Application for identification card -- Required information -- Release of**
299 **anatomical gift information.**

300 (1) To apply for an identification card, the applicant shall appear in person at any license
301 examining station.

302 (2) The applicant shall provide the following information to the division:

303 (a) true and full legal name and address;

304 (b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other
305 satisfactory evidence of birth, which shall be attached to the application;

306 (c) Social Security number or temporary identification number (ITIN) issued by the

307 Internal Revenue Service for a person who does not qualify for a Social Security number;

308 (d) place of birth;

309 (e) height and weight;

310 (f) color of eyes and hair;

311 (g) between July 1, 2002 and July 1, 2006, race in accordance with the categories

312 established by the United States Census Bureau;

313 [~~g~~] (h) signature;

314 [~~h~~] (i) photograph; and

315 [~~i~~] (j) an indication whether the applicant intends to make an anatomical gift under Title
316 26, Chapter 28, Uniform Anatomical Gift Act.

317 (3) The requirements of Section 53-3-234 shall also apply to this section for each person,
318 age 16 and older, applying for an identification card. Refusal to consent to the release of
319 information shall result in the denial of the identification card.

320 Section 8. Section **53-8-104** is amended to read:

321 **53-8-104. Superintendent's duties.**

322 The superintendent shall:

323 (1) divide the state highways into sections for the purpose of patrolling and policing;

324 (2) employ peace officers known as highway patrol troopers to patrol or police the
325 highways within this state and to enforce the state statutes as required;

326 (3) establish ranks, grades, and positions in the Highway Patrol and designate the authority
327 and responsibility in each rank, grade, and position;

328 (4) establish for the Highway Patrol standards and qualifications and fix prerequisites of
329 training, education, and experience for each rank, grade, and position;

330 (5) appoint personnel to each rank, grade, and position necessary for the efficient operation
331 and administration of the Highway Patrol;

332 (6) devise and administer examinations designed to test applicants for positions with the
333 Highway Patrol;

334 (7) make rules governing the Highway Patrol as appear to the superintendent advisable;

335 (8) discharge, demote, or temporarily suspend any employee in the Highway Patrol for
336 cause;

337 (9) prescribe the uniforms to be worn and the equipment to be used by employees of the

338 Highway Patrol;

339 (10) charge against each employee of the Highway Patrol the value of any property of the
340 state lost or destroyed through the carelessness of the employee;

341 (11) establish, with the approval of the Division of Finance, the terms and conditions under
342 which expense allowance should be paid to any employee of the Highway Patrol while away from
343 his station;

344 (12) station the Highway Patrol in localities as he finds advisable for the enforcement of
345 the laws of this state;

346 (13) conduct in conjunction with the State Board of Education in and through all state
347 schools an educational campaign in highway safety and work in conjunction with civic
348 organizations, churches, local units of government, and other organizations that may function in
349 accomplishing the purposes of reducing highway accidents;

350 (14) provide the initial mandatory uniform items for each new trooper hired after July 1,
351 1998; ~~and~~

352 (15) determine by rule a basic uniform allowance system which includes the manner in
353 which troopers may receive maintenance services and vouchers for basic uniforms and administer
354 any funds appropriated by the Legislature to the division for that purpose~~[-]; and~~

355 (16) on or before January 1, 2003, adopt a written policy that prohibits the stopping,
356 detention, or search of any person when the action is solely motivated by considerations of race,
357 color, ethnicity, age, or gender.

358 Section 9. Section **63-55b-153** is amended to read:

359 **63-55b-153. Repeal dates -- Titles 53 and 53A.**

360 (1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2006.

361 (2) Subsection 53-3-804(2)(g) is repealed July 1, 2006.

362 ~~(3)~~ (3) Subsection 53-5-710(4) pertaining to restrictions at Olympic venue secure areas
363 is repealed April 1, 2002.

364 ~~(4)~~ (4) Title 53, Chapter 12, State Olympic Public Safety Command Act, is repealed July
365 1, 2002.

366 ~~(5)~~ (5) Section 53-12-301.1 is repealed April 1, 2002.

367 ~~(6)~~ (6) Section 53A-1-403.5 is repealed July 1, 2007.

368 ~~(7)~~ (7) Section 53A-3-602 is repealed July 1, 2002.

369 [~~6~~] (8) Section 53A-15-901 is repealed July 1, 2005.

370 Section 10. **Effective date.**

371 This act takes effect on July 1, 2002.

Legislative Review Note
as of 1-2-02 1:34 PM

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

Office of Legislative Research and General Counsel