

PENALTIES FOR UNAUTHORIZED USE OF RECORDS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Motor Vehicle Act and the Public Safety Code regarding access to information maintained by an agency.

Highlighted Provisions:

This bill:

► provides that it is a class B misdemeanor to gain access to specified motor vehicle and public safety agency records with the intent to cause a benefit or harm to a person, or to cause damage to a person's property.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-1a-116, as last amended by Laws of Utah 2011, Chapter 243

53-3-109, as last amended by Laws of Utah 2011, Chapters 190 and 243

53-10-108, as last amended by Laws of Utah 2012, Chapter 239

53-10-111, as last amended by Laws of Utah 2011, Chapter 243

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



28 Section 1. Section **41-1a-116** is amended to read:

29 **41-1a-116. Records -- Access to records -- Fees.**

30 (1) (a) All motor vehicle title and registration records of the division are protected
31 unless the division determines based upon a written request by the subject of the record that the
32 record is public.

33 (b) In addition to the provisions of this section, access to all division records is
34 permitted for all purposes described in the federal Driver's Privacy Protection Act of 1994, 18
35 U.S.C. Chapter 123.

36 (2) (a) Access to public records is determined by Section 63G-2-201.

37 (b) A record designated as public under Subsection (1)(a) may be used for advertising
38 or solicitation purposes.

39 (3) Access to protected records, except as provided in Subsection (4), is determined by
40 Section 63G-2-202.

41 (4) (a) In addition to those persons granted access to protected records under Section
42 63G-2-202, the division shall disclose a protected record to a licensed private investigator,
43 holding a valid agency or registrant license, with a legitimate business need, a person with a
44 bona fide security interest, or the owner of a mobile home park subject to Subsection (5), only
45 upon receipt of a signed acknowledgment that the person receiving that protected record may
46 not:

47 (i) resell or disclose information from that record to any other person except as
48 permitted in the federal Driver's Privacy Protection Act of 1994; or

49 (ii) use information from that record for advertising or solicitation purposes.

50 (b) A legitimate business need under Subsection (4)(a) does not include the collection
51 of a debt.

52 (5) The division may disclose the name or address, or both, of the lienholder or mobile
53 home owner of record, or both of them, to the owner of a mobile home park, if all of the
54 following conditions are met:

55 (a) a mobile home located within the mobile home park owner's park has been
56 abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

57 (b) the mobile home park owner has conducted a reasonable search, but is unable to
58 determine the name or address, or both, of the lienholder or mobile home owner of record; and

59 (c) the mobile home park owner has submitted a written statement to the division
60 explaining the mobile home park owner's efforts to determine the name or address, or both, of
61 the lienholder or mobile home owner of record before the mobile home park owner contacted
62 the division.

63 (6) The division may provide protected information to a statistic gathering entity under
64 Subsection (4) only in summary form.

65 (7) A person allowed access to protected records under Subsection (4) may request
66 motor vehicle title or registration information from the division regarding any person, entity, or
67 motor vehicle by submitting a written application on a form provided by the division.

68 (8) If a person regularly requests information for business purposes, the division may
69 by rule allow the information requests to be made by telephone and fees as required under
70 Subsection (9) charged to a division billing account to facilitate division service. The rules
71 shall require that the:

72 (a) division determine if the nature of the business and the volume of requests merit the
73 dissemination of the information by telephone;

74 (b) division determine if the credit rating of the requesting party justifies providing a
75 billing account; and

76 (c) requestor submit to the division an application that includes names and signatures
77 of persons authorized to request information by telephone and charge the fees to the billing
78 account.

79 (9) (a) The division shall charge a reasonable search fee determined under Section
80 63J-1-504 for the research of each record requested.

81 (b) Fees may not be charged for furnishing information to persons necessary for their
82 compliance with this chapter.

83 (c) Law enforcement agencies have access to division records free of charge.

84 (10) (a) It is a class B misdemeanor for a person to [~~knowingly or intentionally~~] access,
85 use, disclose, or disseminate [~~a record created or maintained by the division or~~] any
86 information contained in a record created or maintained by the division [~~for a purpose~~
87 ~~prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.~~] with
88 the intent to:

89 (i) create a benefit for any person;

- 90 (ii) cause harm to any person, including psychological or emotional harm; or
- 91 (iii) cause damage to the property of any person.

92 (b) A person who discovers or becomes aware of any unauthorized use of records
93 created or maintained by the division shall inform the director of the unauthorized use.

94 Section 2. Section **53-3-109** is amended to read:

95 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

96 (1) (a) Except as provided in this section, all records of the division shall be classified
97 and disclosed in accordance with Title 63G, Chapter 2, Government Records Access and
98 Management Act.

99 (b) The division may only disclose personal identifying information:

100 (i) when the division determines it is in the interest of the public safety to disclose the
101 information; and

102 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
103 Chapter 123.

104 (c) The division may disclose personal identifying information:

105 (i) to a licensed private investigator holding a valid agency license, with a legitimate
106 business need;

107 (ii) to an insurer, insurance support organization, or a self-insured entity, or its agents,
108 employees, or contractors that issues any motor vehicle insurance under Title 31A, Chapter 22,
109 Part 3, Motor Vehicle Insurance, for use in connection with claims investigation activities,
110 antifraud activities, rating, or underwriting for any person issued a license certificate under this
111 chapter; or

112 (iii) to a depository institution as defined in Section 7-1-103 for use in accordance with
113 the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

114 (2) (a) A person who receives personal identifying information shall be advised by the
115 division that the person may not:

116 (i) disclose the personal identifying information from that record to any other person;
117 or

118 (ii) use the personal identifying information from that record for advertising or
119 solicitation purposes.

120 (b) Any use of personal identifying information by an insurer or insurance support

121 organization, or by a self-insured entity or its agents, employees, or contractors not authorized
122 by Subsection (1)(c)(ii) is:

123 (i) an unfair marketing practice under Section 31A-23a-402; or

124 (ii) an unfair claim settlement practice under Subsection 31A-26-303(3).

125 (3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee
126 may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer
127 as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing
128 driving risk on the insurer's current motor vehicle insurance policyholders.

129 (b) The disclosure under Subsection (3)(a) shall:

130 (i) include the licensed driver's name, driver license number, date of birth, and an
131 indication of whether the driver has had a moving traffic violation that is a reportable violation,
132 as defined under Section 53-3-102 during the previous month;

133 (ii) be limited to the records of drivers who, at the time of the disclosure, are covered
134 under a motor vehicle insurance policy of the insurer; and

135 (iii) be made under a contract with the insurer or a designee of an insurer.

136 (c) The contract under Subsection (3)(b)(iii) shall specify:

137 (i) the criteria for searching and compiling the driving records being requested;

138 (ii) the frequency of the disclosures;

139 (iii) the format of the disclosures, which may be in bulk electronic form; and

140 (iv) a reasonable charge for the driving record disclosures under this Subsection (3).

141 (4) The division may:

142 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its
143 files or furnishing a report on the driving record of a person;

144 (b) prepare under the seal of the division and deliver upon request, a certified copy of
145 any record of the division, and charge a fee under Section 63J-1-504 for each document
146 authenticated; and

147 (c) charge reasonable fees established in accordance with the procedures and
148 requirements of Section 63J-1-504 for disclosing personal identifying information under
149 Subsection (1)(c).

150 (5) Each certified copy of a driving record furnished in accordance with this section is
151 admissible in any court proceeding in the same manner as the original.

152 (6) (a) A driving record furnished under this section may only report on the driving
153 record of a person for a period of 10 years.

154 (b) Subsection (6)(a) does not apply to court or law enforcement reports, reports of
155 commercial driver license violations, or reports for commercial driver license holders.

156 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
157 division may make rules to designate:

158 (a) what information shall be included in a report on the driving record of a person;

159 (b) the form of a report or copy of the report which may include electronic format;

160 (c) the form of a certified copy, as required under Section 53-3-216, which may include
161 electronic format;

162 (d) the form of a signature required under this chapter which may include electronic
163 format;

164 (e) the form of written request to the division required under this chapter which may
165 include electronic format;

166 (f) the procedures, requirements, and formats for disclosing personal identifying
167 information under Subsection (1)(c); and

168 (g) the procedures, requirements, and formats necessary for the implementation of
169 Subsection (3).

170 (8) (a) It is a class B misdemeanor for a person to [~~knowingly or intentionally~~] access,
171 use, disclose, or disseminate [~~a record created or maintained by the division or~~] any
172 information contained in a record created or maintained by the division [~~for a purpose~~
173 ~~prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.~~] with
174 the intent to:

175 (i) create a benefit for any person;

176 (ii) cause harm to any person, including psychological or emotional harm; or

177 (iii) cause damage to the property of any person.

178 (b) A person who discovers or becomes aware of any unauthorized use of records
179 created or maintained by the division shall inform the commissioner and the division director
180 of the unauthorized use.

181 Section 3. Section **53-10-108** is amended to read:

182 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**

183 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
184 **-- Missing children records -- Penalty for misuse of records.**

185 (1) Dissemination of information from a criminal history record or warrant of arrest
186 information from division files is limited to:

187 (a) criminal justice agencies for purposes of administration of criminal justice and for
188 employment screening by criminal justice agencies;

189 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
190 executive order, court rule, court order, or local ordinance;

191 (c) agencies or individuals for the purpose of obtaining required clearances connected
192 with foreign travel or obtaining citizenship;

193 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
194 agency to provide services required for the administration of criminal justice; and

195 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
196 purposes for which given, and ensure the security and confidentiality of the data;

197 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
198 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

199 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
200 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
201 agency; and

202 (ii) private security agencies through guidelines established by the commissioner for
203 employment background checks for their own employees and prospective employees;

204 (g) a qualifying entity for employment background checks for their own employees and
205 persons who have applied for employment with the qualifying entity; and

206 (h) other agencies and individuals as the commissioner authorizes and finds necessary
207 for protection of life and property and for offender identification, apprehension, and
208 prosecution pursuant to an agreement.

209 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access
210 to data, limit the use of data to research, evaluative, or statistical purposes, preserve the
211 anonymity of individuals to whom the information relates, and ensure the confidentiality and
212 security of the data.

213 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must

214 obtain a signed waiver from the person whose information is requested.

215 (b) The waiver must notify the signee:

216 (i) that a criminal history background check will be conducted;

217 (ii) who will see the information; and

218 (iii) how the information will be used.

219 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:

220 (i) available to persons involved in the hiring or background investigation of the
221 employee; and

222 (ii) used for the purpose of assisting in making an employment or promotion decision.

223 (d) A person who disseminates or uses information obtained from the division under
224 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
225 any penalties provided under this section, is subject to civil liability.

226 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide
227 the employee or employment applicant an opportunity to:

228 (i) review the information received as provided under Subsection (8); and

229 (ii) respond to any information received.

230 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
231 division may make rules to implement this Subsection (3).

232 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.

233 (ii) The name check fee under Subsection (1)(g) is \$15.

234 (iii) These fees remain in effect until changed by the division through the process under
235 Section 63J-1-504.

236 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
237 deposited in the General Fund as a dedicated credit by the department to cover the costs
238 incurred in providing the information.

239 (h) The division or its employees are not liable for defamation, invasion of privacy,
240 negligence, or any other claim in connection with the contents of information disseminated
241 under Subsection (1)(g).

242 (4) (a) Any criminal history record information obtained from division files may be
243 used only for the purposes for which it was provided and may not be further disseminated,
244 except under Subsections (4)(b) and (c).

245 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
246 provided by the agency to the person who is the subject of the history, another licensed
247 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
248 adoption.

249 (c) A criminal history of a defendant provided to a criminal justice agency under
250 Subsection (1)(a) may also be provided by the prosecutor to a defendant's defense counsel,
251 upon request during the discovery process, for the purpose of establishing a defense in a
252 criminal case.

253 (5) If an individual has no prior criminal convictions, criminal history record
254 information contained in the division's computerized criminal history files may not include
255 arrest or disposition data concerning an individual who has been acquitted, the person's charges
256 dismissed, or when no complaint against the person has been filed.

257 (6) (a) This section does not preclude the use of the division's central computing
258 facilities for the storage and retrieval of criminal history record information.

259 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
260 unauthorized agencies or individuals.

261 (7) Direct access through remote computer terminals to criminal history record
262 information in the division's files is limited to those agencies authorized by the commissioner
263 under procedures designed to prevent unauthorized access to this information.

264 (8) (a) The commissioner shall establish procedures to allow an individual right of
265 access to review and receive a copy of the individual's criminal history report.

266 (b) A processing fee for the right of access service, including obtaining a copy of the
267 individual's criminal history report under Subsection (8)(a) is \$15. This fee remains in effect
268 until changed by the commissioner through the process under Section 63J-1-504.

269 (c) (i) The commissioner shall establish procedures for an individual to challenge the
270 completeness and accuracy of criminal history record information contained in the division's
271 computerized criminal history files regarding that individual.

272 (ii) These procedures shall include provisions for amending any information found to
273 be inaccurate or incomplete.

274 (9) The private security agencies as provided in Subsection (1)(f)(ii):

275 (a) shall be charged for access; and

276 (b) shall be registered with the division according to rules made by the division under
277 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

278 (10) Before providing information requested under this section, the division shall give
279 priority to criminal justice agencies needs.

280 (11) (a) It is a class B misdemeanor for a person to [~~knowingly or intentionally~~] access,
281 use, disclose, or disseminate [~~a record created, maintained, or to which access is granted by the~~
282 ~~division or~~] any information contained in a record created, maintained, or to which access is
283 granted by the division [~~for a purpose prohibited or not permitted by statute, rule, regulation, or~~
284 ~~policy of a governmental entity;~~] with the intent to:

285 (i) create a benefit for any person;

286 (ii) cause harm to any person, including psychological or emotional harm; or

287 (iii) cause damage to the property of any person.

288 (b) A person who discovers or becomes aware of any unauthorized use of records
289 created or maintained, or to which access is granted by the division shall inform the
290 commissioner and the director of the Utah Bureau of Criminal Identification of the
291 unauthorized use.

292 Section 4. Section **53-10-111** is amended to read:

293 **53-10-111. Refusal to provide information -- False information -- Misdemeanor.**

294 It is a class B misdemeanor for a person to:

295 (1) neglect or refuse to provide, or willfully withhold any information under this part;

296 (2) willfully provide false information;

297 (3) willfully fail to do or perform any act required under this part;

298 (4) hinder or prevent another from doing an act required under this part; or

299 (5) willfully remove, destroy, alter, or mutilate[~~, or disclose~~] the contents of any file or
300 record created or maintained, or to which access is granted by the division unless authorized by
301 and in compliance with procedures established by the division.