

1 **PROTECTION OF ACCIDENT REPORTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Glenn L. Way**

5 AN ACT RELATING TO MOTOR VEHICLES; PROVIDING FOR THE PROTECTION AND
6 CONFIDENTIALITY OF ACCIDENT REPORTS; PROVIDING FOR CERTAIN
7 DISCLOSURE; AND MAKING TECHNICAL CORRECTIONS.

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

9 AMENDS:

10 **41-6-35**, as last amended by Chapter 174, Laws of Utah 1996

11 **41-6-40**, as last amended by Chapter 138, Laws of Utah 1987

12 **41-12a-202**, as enacted by Chapter 242, Laws of Utah 1985

13 **63-2-304**, as last amended by Chapter 234, Laws of Utah 1997

14 **73-18-13**, as last amended by Chapter 99, Laws of Utah 1987

15 **73-18-14**, as last amended by Chapter 197, Laws of Utah 1986

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

17 Section 1. Section **41-6-35** is amended to read:

18 **41-6-35. Accident reports -- Duty of operator and investigative officer to forward or**
19 **render.**

20 (1) The department may require any operator of a vehicle involved in an accident resulting
21 in injury to or death of any person or total property damage to the apparent extent of \$1,000 or
22 more to [~~forward~~] file within ten days after the request:

23 (a) a written report of the accident to the department; and

24 (b) a supplemental report when the original report is insufficient in the opinion of the
25 department.

26 (2) The department may require witnesses of accidents to render reports to the department.

27 (3) A written accident report is not required under this section from any person who is

28 physically incapable of making a report, during his period of incapacity.

29 (4) (a) Every peace officer who in the regular course of duty investigates a motor vehicle
30 accident described under Subsection (1) shall file the original report of the accident with the
31 department within ten days after completing the investigation.

32 (b) The report shall be made either at the time of and at the scene of the accident or later
33 by interviewing participants or witnesses.

34 (5) The written reports required to be filed with the department [~~by peace officers~~] under
35 this section and the information in them are [~~not privileged or~~] protected and confidential and may
36 be disclosed only as provided in Section 41-6-40.

37 Section 2. Section **41-6-40** is amended to read:

38 **41-6-40. Accident reports confidential -- Insurance policy information -- Use as**
39 **evidence -- Penalty for false information.**

40 (1) As used in this section, "agent" means a person's ^h [attorney, insurer, or any other
41 individual or entity with written permission from the person to receive the person's written accident
42 report.] :

42a (A) ATTORNEY;

42b (b) INSURER; OR

42c (c) ANY OTHER INDIVIDUAL OR ENTITY WITH WRITTEN PERMISSION FROM THE PERSON

TO

42d RECEIVE THE PERSON'S WRITTEN ACCIDENT REPORT. ^h

43 [~~(1) AH~~] (2) Except as provided in Subsection (3), all written reports required in this
44 article to be [~~forwarded to~~] filed with the department [~~by operators or owners of vehicles involved~~
45 ~~in accidents or by garages~~];

46 (a) are without prejudice to the reporting individual [~~and~~];

47 (b) are protected and for the confidential use of the department or other state, local, or
48 federal agencies having use for the records for official governmental statistical, investigative, and
49 accident prevention purposes; and

50 (c) may be disclosed only in a statistical form that protects the privacy of any person
51 involved in the accident. [~~However, the department may disclose the identity of a person involved~~
52 ~~in an accident when the identity is not otherwise known or when the person denies his presence~~
53 ~~at the accident. The]~~

54 (3) (a) The department shall disclose a written accident report and its accompanying data
55 to:

56 (i) a person involved in the accident, excluding a witness to the accident;

57 (ii) a person suffering loss or injury in the accident;

(iii) an agent, parent, or legal guardian of a person described in Subsections (3)(a)(i) and

59 (ii):

60 (iv) a member of the press or broadcast news media;

61 (v) a state, local, or federal agency that uses the records for official governmental,
62 investigative, or accident prevention purposes; and

63 (vi) law enforcement personnel when acting in their official governmental capacity.

64 (b) In accordance with Subsection (3)(a), the department shall disclose whether any person
65 or vehicle involved in an accident reported under this section was covered by a vehicle insurance
66 policy, and the name of the insurer.

67 ~~[(2) Written]~~ (4) (a) Except as provided in Subsection (4)(b), written reports [forwarded]
68 filed under this section may not be used as evidence in any [trial,] civil or criminal[;] trial arising
69 out of an accident[, except that the department shall furnish upon].

70 (b) Upon demand of any party to the trial or upon demand of any court, the department
71 shall furnish a certificate showing that a specified accident report has or has not been made to the
72 department in compliance with law[, and if]. If the report has been made, the certificate furnished
73 by the department shall show the date, time, and location of the accident, the names and addresses
74 of the drivers, the owners of the vehicles involved, and the investigating officers. The reports may
75 be used as evidence when necessary to prosecute charges filed in connection with a violation of
76 Subsection [(3)] (5).

77 ~~[(3)]~~ (5) A person who gives information in oral or written reports as required in this
78 chapter knowing or having reason to believe that the information is false is guilty of a class A
79 misdemeanor.

80 Section 3. Section **41-12a-202** is amended to read:

81 **41-12a-202. Access to accident reports.**

82 (1) Accident reports and supplemental information as required under this chapter are
83 protected and are for the confidential use of the department and other state agencies and may be
84 disclosed only as provided in Section 41-6-40. [However, the department shall disclose accident
85 reports and accompanying data to persons suffering loss or injury in any motor vehicle accident,
86 whether or not they have deposited proof of owner's or operator's security under this chapter.]

87 (2) (a) Any person entitled to the disclosure of an accident report, as provided in Section
88 41-6-40, may obtain a photocopy by paying the department [\$5] a fee as authorized by Section
89 63-38-3.2.

90 (b) These fees shall be deposited in the General Fund. [~~Bona fide representatives of~~
91 ~~persons entitled to disclosure may also obtain copies of accident reports and any accompanying~~
92 ~~data.~~]

93 Section 4. Section **63-2-304** is amended to read:

94 **63-2-304. Protected records.**

95 The following records are protected if properly classified by a governmental entity:

96 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has
97 provided the governmental entity with the information specified in Section 63-2-308;

98 (2) commercial information or nonindividual financial information obtained from a person
99 if:

100 (a) disclosure of the information could reasonably be expected to result in unfair
101 competitive injury to the person submitting the information or would impair the ability of the
102 governmental entity to obtain necessary information in the future;

103 (b) the person submitting the information has a greater interest in prohibiting access than
104 the public in obtaining access; and

105 (c) the person submitting the information has provided the governmental entity with the
106 information specified in Section 63-2-308;

107 (3) commercial or financial information acquired or prepared by a governmental entity to
108 the extent that disclosure would lead to financial speculations in currencies, securities, or
109 commodities that will interfere with a planned transaction by the governmental entity or cause
110 substantial financial injury to the governmental entity or state economy;

111 (4) records the disclosure of which could cause commercial injury to, or confer a
112 competitive advantage upon a potential or actual competitor of, a commercial project entity as
113 defined in Subsection 11-13-3(3);

114 (5) test questions and answers to be used in future license, certification, registration,
115 employment, or academic examinations;

116 (6) records the disclosure of which would impair governmental procurement proceedings
117 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
118 governmental entity, except that this subsection does not restrict the right of a person to see bids
119 submitted to or by a governmental entity after bidding has closed;

120 (7) records that would identify real property or the appraisal or estimated value of real or

121 personal property, including intellectual property, under consideration for public acquisition before
122 any rights to the property are acquired unless:

123 (a) public interest in obtaining access to the information outweighs the governmental
124 entity's need to acquire the property on the best terms possible;

125 (b) the information has already been disclosed to persons not employed by or under a duty
126 of confidentiality to the entity;

127 (c) in the case of records that would identify property, potential sellers of the described
128 property have already learned of the governmental entity's plans to acquire the property; or

129 (d) in the case of records that would identify the appraisal or estimated value of property,
130 the potential sellers have already learned of the governmental entity's estimated value of the
131 property;

132 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
133 compensated transaction of real or personal property including intellectual property, which, if
134 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of
135 the subject property, unless:

136 (a) the public interest in access outweighs the interests in restricting access, including the
137 governmental entity's interest in maximizing the financial benefit of the transaction; or

138 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
139 value of the subject property have already been disclosed to persons not employed by or under a
140 duty of confidentiality to the entity;

141 (9) records created or maintained for civil, criminal, or administrative enforcement
142 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
143 release of the records:

144 (a) reasonably could be expected to interfere with investigations undertaken for
145 enforcement, discipline, licensing, certification, or registration purposes;

146 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
147 proceedings;

148 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

149 (d) reasonably could be expected to disclose the identity of a source who is not generally
150 known outside of government and, in the case of a record compiled in the course of an
151 investigation, disclose information furnished by a source not generally known outside of

152 government if disclosure would compromise the source; or

153 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,
154 policies, or orders not generally known outside of government if disclosure would interfere with
155 enforcement or audit efforts;

156 (10) records the disclosure of which would jeopardize the life or safety of an individual;

157 (11) records the disclosure of which would jeopardize the security of governmental
158 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
159 other appropriation or use contrary to law or public policy;

160 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
161 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
162 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

163 (13) records that, if disclosed, would reveal recommendations made to the Board of
164 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board
165 of Pardons and Parole, or the Department of Human Services that are based on the employee's or
166 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

167 (14) records and audit workpapers that identify audit, collection, and operational
168 procedures and methods used by the State Tax Commission, if disclosure would interfere with
169 audits or collections;

170 (15) records of a governmental audit agency relating to an ongoing or planned audit until
171 the final audit is released;

172 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
173 litigation that are not available under the rules of discovery;

174 (17) records disclosing an attorney's work product, including the mental impressions or
175 legal theories of an attorney or other representative of a governmental entity concerning litigation;

176 (18) records of communications between a governmental entity and an attorney
177 representing, retained, or employed by the governmental entity if the communications would be
178 privileged as provided in Section 78-24-8;

179 (19) personal files of a legislator, including personal correspondence to or from a member
180 of the Legislature, but not correspondence that gives notice of legislative action or policy;

181 (20) (a) records in the custody or control of the Office of Legislative Research and General
182 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or

183 contemplated course of action before the legislator has elected to support the legislation or course
184 of action, or made the legislation or course of action public; and

185 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
186 Legislative Research and General Counsel is a public document unless a legislator submits the
187 "Request For Legislation" with a request that it be maintained as a protected record until such time
188 as the legislator elects to make the legislation or course of action public;

189 (21) research requests from legislators to the Office of Legislative Research and General
190 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
191 to these requests;

192 (22) drafts, unless otherwise classified as public;

193 (23) records concerning a governmental entity's strategy about collective bargaining or
194 pending litigation;

195 (24) records of investigations of loss occurrences and analyses of loss occurrences that
196 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
197 Employers' Fund, or similar divisions in other governmental entities;

198 (25) records, other than personnel evaluations, that contain a personal recommendation
199 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
200 privacy, or disclosure is not in the public interest;

201 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
202 resources that if known would jeopardize the security of those resources or of valuable historic,
203 scientific, educational, or cultural information;

204 (27) records of independent state agencies if the disclosure of the records would conflict
205 with the fiduciary obligations of the agency;

206 (28) records of a public institution of higher education regarding tenure evaluations,
207 appointments, applications for admissions, retention decisions, and promotions, which could be
208 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
209 Meetings, provided that records of the final decisions about tenure, appointments, retention,
210 promotions, or those students admitted, may not be classified as protected under this section;

211 (29) records of the governor's office, including budget recommendations, legislative
212 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
213 policies or contemplated courses of action before the governor has implemented or rejected those

214 policies or courses of action or made them public;

215 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
216 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
217 recommendations in these areas;

218 (31) records provided by the United States or by a government entity outside the state that
219 are given to the governmental entity with a requirement that they be managed as protected records
220 if the providing entity certifies that the record would not be subject to public disclosure if retained
221 by it;

222 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
223 except as provided in Section 52-4-7;

224 (33) records that would reveal the contents of settlement negotiations but not including
225 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

226 (34) memoranda prepared by staff and used in the decisionmaking process by an
227 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other
228 body charged by law with performing a quasi-judicial function;

229 (35) records that would reveal negotiations regarding assistance or incentives offered by
230 or requested from a governmental entity for the purpose of encouraging a person to expand or
231 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
232 or place the governmental entity at a competitive disadvantage, but this section may not be used
233 to restrict access to a record evidencing a final contract;

234 (36) materials to which access must be limited for purposes of securing or maintaining the
235 governmental entity's proprietary protection of intellectual property rights including patents,
236 copyrights, and trade secrets;

237 (37) the name of a donor or a prospective donor to a governmental entity, including a
238 public institution of higher education, and other information concerning the donation that could
239 reasonably be expected to reveal the identity of the donor, provided that:

240 (a) the donor requests anonymity in writing;

241 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
242 classified protected by the governmental entity under this Subsection (37); and

243 (c) except for public institutions of higher education, the governmental unit to which the
244 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no

245 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
246 owned or controlled by the donor or his immediate family; [~~and~~]

247 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;
248 and

249 [~~(38)~~] (39) the following records of a public institution of education, which have been
250 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the
251 institution: unpublished lecture notes, unpublished research notes and data, unpublished
252 manuscripts, creative works in process, scholarly correspondence, and confidential information
253 contained in research proposals. Nothing in this Subsection (38) shall be construed to affect the
254 ownership of a record.

255 Section 5. Section 73-18-13 is amended to read:

256 **73-18-13. Duties of operator involved in accident -- Notification and reporting**
257 **procedures -- Use of accident reports -- Giving false information as misdemeanor.**

258 (1) As used in this section, "agent" has the same meaning as provided in Section 41-6-40.

259 [~~(1)~~] (2) It is the duty of the operator of a vessel involved in an accident, if he can do so
260 without seriously endangering his own vessel, crew, or passengers, to render aid to those affected
261 by the accident as may be practicable. The operator shall also give his name, address, and
262 identification of his vessel in writing to any person injured or to the owner of any property
263 damaged in the accident.

264 [~~(2)~~] (3) The board shall adopt rules governing the notification and reporting procedure
265 for vessels involved in accidents. [~~Such~~] The rules shall be consistent with federal requirements.

266 [~~(3) AH~~] (4) (a) Except as provided in Subsection (4)(b), all accident reports;

267 (i) are protected and shall be for the confidential use of the division or other state, local,
268 or federal agencies having use for the records for official governmental statistical, investigative,
269 and accident prevention purposes[~~; except that the division may disclose the identity of a person~~
270 ~~involved in an accident when the person's identity is not otherwise known or when the person~~
271 ~~denies his presence at the accident. No]; and~~

272 (ii) may be disclosed only in a statistical form that protects the privacy of any person
273 involved in the accident.

274 (b) The division shall disclose a written accident report and its accompanying data to:

275 (i) a person involved in the accident, excluding a witness to the accident;

276 (ii) a person suffering loss or injury in the accident;
 277 (iii) an agent, parent, or legal guardian of a person described in Subsections (3)(a)(i) and
 278 (ii);
 279 (iv) a member of the press or broadcast news media;
 280 (v) a state, local, or federal agency that uses the records for official governmental,
 281 investigative, or accident prevention purposes; and
 282 (vi) law enforcement personnel when acting in their official governmental capacity.
 283 (5) (a) Except as provided in Subsection (5)(b), an accident report [shall] may not be used
 284 as evidence in any [trial,] civil or criminal trial, arising out of an accident[,-except that the division
 285 shall furnish upon].
 286 (b) Upon demand of any person who has, or claims to have, made the report, or[-] upon
 287 demand of any court, the division shall furnish a certificate showing that a specified accident report
 288 has or has not been made to the division solely to prove a compliance or a failure to comply with
 289 the requirement that a report be made to the division. [~~Reports~~] Accident reports may be used as
 290 evidence when necessary to prosecute charges filed in connection with a violation of Subsection
 291 [~~(4)~~] (6).
 292 [~~(4)~~] (6) Any person who gives false information, knowingly or having reason to believe
 293 it is false, in an oral or written report as required in this chapter, is guilty of a class A
 294 misdemeanor.
 295 Section 6. Section **73-18-14** is amended to read:
 296 **73-18-14. Transmittal of information to official or agency of United States.**
 297 In accordance with any request duly made by an authorized official or agency of the United
 298 States, any information compiled or otherwise available to the division under Subsection 73-18-13
 299 [~~(2)~~] (4) shall be transmitted to the official or agency of the United States.

Legislative Review Note
as of 2-2-99 5:44 PM

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

Office of Legislative Research and General Counsel