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PROTECTION OF ACCIDENT REPORT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Glenn L. Way

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

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

AMENDS:

41-6-35, as last amended by Chapter 30, Laws of Utah 1999

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

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

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

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

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

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

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

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

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

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

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

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

(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 or an electronic copy of the report
31 of the accident with the 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 -- When confidential -- Insurance policy information -- Use**
39 **as evidence -- Penalty for false information.**

40 (1) As used in this section, "agent" means a person's:

41 (a) attorney;

42 (b) insurer; or

43 (c) any other individual or entity with written permission from the person to receive the
44 person's written accident report.

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

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

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

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

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

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

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

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

61 (ii);

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

63 (v) a state, local, or federal agency that uses the records for official governmental,

64 investigative, or accident prevention purposes; and

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

66 (b) In accordance with Subsection (3)(a), the department shall disclose whether any person

67 or vehicle involved in an accident reported under this section was covered by a vehicle insurance

68 policy, and the name of the insurer.

69 ~~[(2) Written]~~ (4) (a) Except as provided in Subsection (4)(b), written reports [forwarded]

70 filed under this section may not be used as evidence in any [trial,] civil or criminal[;] trial arising

71 out of an accident[; except that the department shall furnish upon].

72 (b) Upon demand of any party to the trial or upon demand of any court, the department

73 shall furnish a certificate showing that a specified accident report has or has not been made to the

74 department in compliance with law[; and if]. If the report has been made, the certificate furnished

75 by the department shall show the date, time, and location of the accident, the names and addresses

76 of the drivers, the owners of the vehicles involved, and the investigating officers. The reports may

77 be used as evidence when necessary to prosecute charges filed in connection with a violation of

78 Subsection [(3)] (5).

79 ~~[(3)] (5)~~ A person who gives information in oral or written reports as required in this

80 chapter knowing or having reason to believe that the information is false is guilty of a class A

81 misdemeanor.

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

83 **41-12a-202. Access to accident reports.**

84 (1) Accident reports and supplemental information as required under this chapter are

85 protected and are for the confidential use of the department and other state, local, or federal

86 government agencies and may be disclosed only as provided in Section 41-6-40. [However, the

87 department shall disclose accident reports and accompanying data to persons suffering loss or

88 injury in any motor vehicle accident, whether or not they have deposited proof of owner's or

89 operator's security under this chapter.]

90 (2) (a) Any person entitled to the disclosure of an accident report, as provided in Section
91 41-6-40, may obtain a photocopy by paying the department [\$5] a fee established under Section
92 63-38-3.2.

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

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

97 **63-2-304. Protected records.**

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

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

101 (2) commercial information or nonindividual financial information obtained from a person
102 if:

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

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

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

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

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

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

119 (6) records the disclosure of which would impair governmental procurement proceedings
120 or give an unfair advantage to any person proposing to enter into a contract or agreement with a

121 governmental entity, except that this subsection does not restrict the right of a person to see bids
122 submitted to or by a governmental entity after bidding has closed;

123 (7) records that would identify real property or the appraisal or estimated value of real or
124 personal property, including intellectual property, under consideration for public acquisition before
125 any rights to the property are acquired unless:

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

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

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

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

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

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

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

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

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

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

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

152 (d) reasonably could be expected to disclose the identity of a source who is not generally
153 known outside of government and, in the case of a record compiled in the course of an
154 investigation, disclose information furnished by a source not generally known outside of
155 government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

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

182 (19) personal files of a legislator, including personal correspondence to or from a member

183 of the Legislature, but not correspondence that gives notice of legislative action or policy;

184 (20) (a) records in the custody or control of the Office of Legislative Research and General
185 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
186 contemplated course of action before the legislator has elected to support the legislation or course
187 of action, or made the legislation or course of action public; and

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

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

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

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

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

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

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

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

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

214 (29) records of the governor's office, including budget recommendations, legislative
215 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
216 policies or contemplated courses of action before the governor has implemented or rejected those
217 policies or courses of action or made them public;

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

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

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

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

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

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

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

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

243 (a) the donor requests anonymity in writing;

244 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

245 classified protected by the governmental entity under this Subsection (37); and

246 (c) except for public institutions of higher education, the governmental unit to which the
247 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
248 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
249 owned or controlled by the donor or his immediate family; [~~and~~]

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

251 and

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

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

259 **73-18-13. Duties of operator involved in accident -- Notification and reporting**
260 **procedures -- Use of accident reports -- Giving false information as misdemeanor.**

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

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

267 [~~(2)~~] (3) The board shall adopt rules governing the notification and reporting procedure
268 for vessels involved in accidents. [~~Such~~] The rules shall be consistent with federal requirements.

269 [~~(3)–AH~~] (4) (a) Except as provided in Subsection (4)(b), all accident reports:

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

275 (ii) may be disclosed only in a statistical form that protects the privacy of any person

276 involved in the accident.

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

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

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

280 (iii) an agent, parent, or legal guardian of a person described in Subsections (4)(b)(i) and

281 (ii);

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

283 (v) a state, local, or federal agency that uses the records for official governmental,

284 investigative, or accident prevention purposes; and

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

286 (5) (a) Except as provided in Subsection (5)(b), an accident report [shall] may not be used

287 as evidence in any [trial,] civil or criminal trial, arising out of an accident[, except that the division

288 shall furnish upon].

289 (b) Upon demand of any person who has, or claims to have, made the report, or[;] upon

290 demand of any court, the division shall furnish a certificate showing that a specified accident report

291 has or has not been made to the division solely to prove a compliance or a failure to comply with

292 the requirement that a report be made to the division. [~~Reports~~] Accident reports may be used as

293 evidence when necessary to prosecute charges filed in connection with a violation of Subsection

294 [~~(4)~~] (6).

295 [~~(4)~~] (6) Any person who gives false information, knowingly or having reason to believe

296 it is false, in an oral or written report as required in this chapter, is guilty of a class A

297 misdemeanor.

298 Section 6. Section **73-18-14** is amended to read:

299 **73-18-14. Transmittal of information to official or agency of United States.**

300 In accordance with any request duly made by an authorized official or agency of the United

301 States, any information compiled or otherwise available to the division under [~~Subsection~~] Section

302 73-18-13 [~~(2)~~] shall be transmitted to the official or agency of the United States.

Legislative Review Note
as of 1-6-00 12:53 PM

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

Office of Legislative Research and General Counsel