

**INFORMED CONSENT FOR GENETIC  
TESTING**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Nora B. Stephens**

AN ACT RELATING TO HEALTH; DEFINING TERMS; REQUIRING VERBAL INFORMED  
CONSENT PURSUANT TO AN INSTITUTION'S WRITTEN PROTOCOL PRIOR TO  
COLLECTING A DNA SAMPLE FOR GENETIC ANALYSIS; REQUIRING WRITTEN  
CONSENT PURSUANT TO AN INSTITUTION'S WRITTEN PROTOCOL TO DISCLOSE  
PRIVATE GENETIC INFORMATION TO A THIRD PARTY; ESTABLISHING EXCEPTIONS  
TO THE REQUIREMENT OF INFORMED CONSENT; PERMITTING COMPELLED  
DISCLOSURE OF PRIVATE GENETIC INFORMATION IN LIMITED CIRCUMSTANCES;  
PROVIDING A PRIVATE RIGHT OF ACTION FOR VIOLATIONS AFTER JUNE 2001;  
AUTHORIZING THE ATTORNEY GENERAL TO ENFORCE THE ACT; AND PROVIDING  
AN EFFECTIVE DATE.

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

AMENDS:

**63-2-202**, as last amended by Chapter 312, Laws of Utah 1994

**63-2-302**, as last amended by Chapter 48, Laws of Utah 1999

ENACTS:

**26-45-101**, Utah Code Annotated 1953

**26-45-102**, Utah Code Annotated 1953

**26-45-103**, Utah Code Annotated 1953

**26-45-104**, Utah Code Annotated 1953

**26-45-105**, Utah Code Annotated 1953

**26-45-106**, Utah Code Annotated 1953

**26-45-107**, Utah Code Annotated 1953

28           **26-45-108**, Utah Code Annotated 1953

29           **26-45-109**, Utah Code Annotated 1953

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

31           Section 1. Section **26-45-101** is enacted to read:

32                   **CHAPTER 45. INFORMED CONSENT FOR GENETIC TESTING ACT**

33           **26-45-101. Title.**

34           This chapter is known as the "Informed Consent for Genetic Testing Act."

35           Section 2. Section **26-45-102** is enacted to read:

36           **26-45-102. Definitions.**

37           As used in this chapter:

38           (1) "Compulsory disclosure" means any disclosure of private genetic information  
39 mandated or required by federal law, state law, or Section 26-45-107.

40           (2) "Disclose" or "disclosure" means to convey or to provide access to private genetic  
41 information to a person other than the individual.

42           (3) "DNA" means deoxyribonucleic acid, ribonucleic acid, and chromosomes, which may  
43 be analyzed to detect heritable diseases or conditions, including the identification of carriers,  
44 predicting risk of disease, or establishing a clinical diagnosis.

45           (4) "DNA sample" means any human biological specimen from which DNA can be  
46 extracted, or DNA extracted from such specimen.

47           (5) "DNA typing" means a scientifically reliable method for characterizing and comparing  
48 sequences of DNA, and applying a statistical analysis of population frequency to determine that  
49 if the DNA sequences match, the probability that the match occurs by chance.

50           (6) (a) "Genetic analysis" or "genetic test" means the testing or analysis of an identifiable  
51 individual's DNA that results in information that is derived from the presence, absence, alteration,  
52 or mutation of an inherited gene or genes, or the presence or absence of a specific DNA marker  
53 or markers.

54           (b) "Genetic analysis" or "genetic test" does not mean:

55           (i) a routine physical examination;

56           (ii) a routine chemical, blood, or urine analysis;

57           (iii) a test to identify the presence of drugs or HIV infection; or

58           (iv) a test performed due to the presence of signs, symptoms, or other manifestations of

59 a disease, illness, impairment, or other disorder.

60 (7) (a) "Individual" means the person from whose body the DNA sample originated unless  
61 Subsection (7)(b) or (c) applies.

62 (b) In the event that the person from whose body the DNA sample originated is a minor  
63 or an incompetent person, "individual" means the person with the legal authority to make health  
64 care decisions on behalf of the minor or incompetent person.

65 (c) In the event that the person from whose body the DNA sample originated is deceased,  
66 "individual" means, in the following order of priority, the deceased person's:

67 (i) estate administrator or executor;

68 (ii) legal guardian;

69 (iii) spouse;

70 (iv) parent; or

71 (v) child 18 years of age or older.

72 (8) "Individual identifier" means a name, address, Social Security number, health insurance  
73 identification number, or similar information by which the identity of an individual can be  
74 determined with reasonable accuracy. The term does not include information that has been  
75 anonymized through encryption or encoding.

76 (9) "Institutional Review Board" means a board established in accordance with 45 CFR  
77 46.102(g)(1992) as such regulation may be amended.

78 (10) "Person" means any person, organization, or entity other than the individual.

79 (11) (a) "Private genetic information" means any information about an identifiable  
80 individual that is derived from the presence, absence, alteration, or mutation of an inherited gene  
81 or genes, or the presence or absence of a specific DNA marker or markers, and which has been  
82 obtained from a genetic test or analysis of the individual's DNA.

83 (b) "Private genetic information" does not include information that is derived from:

84 (i) a routine physical examination;

85 (ii) a routine chemical, blood, or urine analysis;

86 (iii) a test to identify the presence of drugs or HIV infection; or

87 (iv) a test performed due to the presence of signs, symptoms, or other manifestations of  
88 a disease, illness, impairment, or other disorder.

89 (12) "Verbal informed consent" means a face-to-face exchange in which an individual is

90 informed of the significance of undergoing a genetic test and the unique health information that  
91 may result from such a test in a manner that complies with written protocols for verbal informed  
92 consent for genetic testing privacy adopted by:

93 (a) the clinical institution under whose direction informed consent is being sought; or

94 (b) the research institution under whose direction informed consent is being sought,  
95 provided that the written protocols have been approved by an institutional review board.

96 (13) "Prior written authorization" means a document signed and dated by an individual  
97 authorizing the disclosure of private genetic information to a person or class of persons after being  
98 informed of the significance of the authorization in a manner that complies with written protocols  
99 for prior written authorization for disclosure of private genetic information adopted by:

100 (a) the institution in possession of the individual's private genetic information; and

101 (b) an institutional review board, if the institution in possession of the individual's private  
102 genetic information conducts research.

103 Section 3. Section **26-45-103** is enacted to read:

104 **26-45-103. DNA samples collected before or after January 1, 2001.**

105 Except as provided in Section 26-45-108, an individually identifiable DNA sample  
106 collected in this state:

107 (1) for genetic analysis on or after January 1, 2001, may only be collected, analyzed,  
108 stored, and used for research or other purposes to the extent expressly permitted by and in strict  
109 accordance with informed consent obtained in compliance with the requirements of Section  
110 26-45-104;

111 (2) before January 1, 2001, may be subject to genetic analysis for clinical purposes without  
112 complying with the provisions of Section 26-45-104; and

113 (3) before January 1, 2001, may be subject to genetic analysis for research purposes:

114 (a) in accordance with the specific purpose for which the sample was originally collected;

115 (b) after the sample has been permanently anonymized through the removal and  
116 destruction of individual identifiers; or

117 (c) in connection with a research protocol approved by an institutional review board and:

118 (i) the informed consent requirements of Section 26-45-104 are met; or

119 (ii) a person who serves as a custodian of records and is not directly involved in research  
120 or genetic analysis:

121 (A) directs the removal of all individually identifying information from the DNA sample  
122 before the sample is analyzed in connection with the approved research protocol;

123 (B) if the identifying information is not destroyed, maintains the confidentiality of  
124 individually identifying information and stores the information in a manner in which only the  
125 custodian of records and his direct subordinates have access to the information; and

126 (C) only uses stored individually identifying information if the use is necessary to further  
127 a legitimate research purpose which is approved by an institutional review board.

128 Section 4. Section **26-45-104** is enacted to read:

129 **26-45-104. Informed consent for genetic testing.**

130 (1) Except as provided in Section 26-45-106, no person may collect or cause to be  
131 collected an individually identifiable DNA sample in this state for genetic analysis without:

132 (a) obtaining verbal informed consent; and

133 (b) informing the individual of the existence of the institution's written protocol for genetic  
134 testing privacy.

135 (2) A person may not perform a genetic test on an individually identifiable DNA sample  
136 if that person has actual knowledge that the individual:

137 (a) was in Utah at the time the sample was collected; and

138 (b) did not give informed consent in the manner required by Subsection (1).

139 (3) An individual shall be given a copy of an institution's written protocol for genetic  
140 testing privacy upon request.

141 Section 5. Section **26-45-105** is enacted to read:

142 **26-45-105. Disclosure of private genetic information.**

143 (1) Except as provided in Sections 26-45-106 and 26-45-107, no person who, in the  
144 ordinary course of business, practice of a profession, or rendering of a service, creates, stores,  
145 receives, or furnishes private genetic information, may disclose private genetic information to any  
146 other person without:

147 (a) the prior written authorization of the individual; and

148 (b) informing the individual of the existence of the institution's written protocol for  
149 disclosure of private genetic information.

150 (2) A copy of the written authorization shall be provided to the individual. A copy of the  
151 institution's written protocol for disclosure of private genetic information shall be given to the

152 individual upon request.

153 (3) An individual may revoke or amend the authorization by contacting the person to  
154 whom authorization was given.

155 (4) An individual may not maintain an action against a person for disclosure of private  
156 genetic information made in good faith reliance on a valid written authorization if the person had  
157 no notice of the revocation of the authorization at the time the disclosure was made.

158 (5) A general authorization for the release of medical records or medical information may  
159 not be used as a written authorization for the disclosure of private genetic information.

160 Section 6. Section **26-45-106** is enacted to read:

161 **26-45-106. Exceptions to informed consent.**

162 (1) Notwithstanding any other provision in this chapter, a person may provide access to  
163 an individually identifiable DNA sample, or to data derived from DNA typing, to assist in the  
164 identification of a dead body or the cause of death, provided that the DNA sample is from the dead  
165 body and the analysis is limited to that which is necessary to determine the identity of the dead  
166 body.

167 (2) Nothing in this chapter may be construed to affect criminal investigations, criminal  
168 proceedings, or the authority of law enforcement agencies under Title 53, Chapter 10, Criminal  
169 Investigations and Technical Services Division, in collecting, storing, testing, typing, and  
170 controlling access to DNA samples in the course of conducting criminal investigations.

171 (3) (a) Nothing in this chapter may be construed to prohibit the collection or analysis of  
172 an individually identifiable DNA sample pursuant to Title 62A, Chapter 11, Recovery Services;  
173 Title 78, Chapter 45a, Uniform Act on Paternity; or Rule 35 of the Utah Rules of Civil Procedure  
174 if the provisions of this Subsection (3) have been met.

175 (b) An order or agency request under Subsection (3)(a) may only be entered upon a finding  
176 that:

177 (i) the genetic condition of the individual has been placed at issue;

178 (ii) other ways of obtaining the private information are not available or would not be  
179 effective; and

180 (iii) there is a compelling need for the private genetic information which substantially  
181 outweighs the potential harm to the privacy interests of the individual.

182 (c) An order or agency request under Subsection (3)(a) shall specify:

- 183 (i) the manner of collection of the DNA sample;  
184 (ii) the person or persons authorized to collect and analyze the DNA sample;  
185 (iii) the purpose of the genetic analysis;  
186 (iv) that the genetic analysis is limited to that which is necessary to fulfill the purpose of  
187 the order or request;  
188 (v) that the sample may only be stored until the matter underlying the order or agency  
189 request has been resolved and the time for appeal has lapsed;  
190 (vi) those persons to whom disclosure of the resulting private genetic information may be  
191 made because of a compelling need to know such information; and  
192 (vii) such other measures as may be necessary to limit disclosure of the resulting private  
193 genetic information for the protection of the individual.

194 (d) A paternity action brought under Subsection (3)(a) shall be presumed to meet the  
195 finding requirement of Subsection (3)(b).

196 Section 7. Section **26-45-107** is enacted to read:

197 **26-45-107. Compulsory disclosure of private genetic information.**

198 (1) No person, including an individual, who maintains private genetic information may be  
199 compelled to disclose such information pursuant to a request for compulsory disclosure in any  
200 judicial, legislative, or administrative proceeding unless:

201 (a) the person maintaining the genetic information has received the authorization of the  
202 individual to release the information in response to the request for compulsory disclosure;

203 (b) the individual is a party to or the subject of the proceeding and the private genetic  
204 information is at issue; or

205 (c) the genetic information is for use in a law enforcement proceeding or investigation in  
206 which the person maintaining the information is the subject or a party.

207 (2) (a) A person requesting compulsory disclosure pursuant to Subsection (1)(b) or (c)  
208 shall serve upon the person maintaining the genetic information and upon the individual:

209 (i) a copy of the request at least ten days prior to the date on which the compulsory  
210 disclosure is requested; and

211 (ii) a statement of the right of the individual or person maintaining the genetic information  
212 to have any objections to compulsory disclosure heard by the applicable court, legislature, or  
213 administrative agency prior to the issuance of a compulsory disclosure order, and the procedure

214 to be followed to have any such objections heard.

215 (b) Service under Subsection (2)(a) may be sent by certified mail, return receipt requested,  
216 or hand-delivered.

217 (3) Service of a compulsory disclosure request upon a person maintaining private genetic  
218 information shall be accompanied by a written certification, signed by the person seeking to obtain  
219 the private genetic information or his authorized representative:

220 (a) identifying at least one subsection of Subsection (1) in justification of compulsory  
221 disclosure; and

222 (b) indicating that the notice requirement of Subsection (2)(a) has been met.

223 (4) An order under this section may only be entered upon a finding that:

224 (a) other ways of obtaining the private information are not available or would not be  
225 effective; and

226 (b) there is a compelling need for the private genetic information which substantially  
227 outweighs the potential harm to the privacy interests of the individual.

228 (5) An order under this section which authorizes the disclosure of private genetic  
229 information shall:

230 (a) limit disclosure to those parts of the record containing such information as is essential  
231 to fulfill the objective of the order;

232 (b) limit disclosure to those persons whose need for the information is the basis of the  
233 order; and

234 (c) include such other measures as may be necessary to limit disclosure for the protection  
235 of the individual.

236 Section 8. Section **26-45-108** is enacted to read:

237 **26-45-108. Private right of action.**

238 (1) An individual whose legal rights arising under this chapter have been violated after  
239 June 30, 2001, may recover damages and be granted equitable relief in a civil action.

240 (2) Any person who violates the legal rights of an individual arising from this chapter shall  
241 be liable to the individual for each separate violation in an amount equal to:

242 (a) actual damages sustained as a result of the violation; or

243 (b) (i) \$2,500 if the violation is the result of negligence;

244 (ii) \$5,000 if the violation is the result of gross negligence;

245 (iii) \$15,000 if the violation is the result of an intentional and wilful act; or

246 (iv) \$30,000 if the violation is the result of a malicious act; and

247 (c) reasonable attorneys' fees up to \$5,000.

248 (3) A person is not liable for damages for a violation of Subsection (2)(b)(i) or (ii) if the

249 person:

250 (a) corrected the violation within three working days of having knowledge of the violation;

251 and

252 (b) no actual harm resulted from the violation.

253 Section 9. Section **26-45-109** is enacted to read:

254 **26-45-109. Enforcement.**

255 (1) Whenever the attorney general has reason to believe that any person is using or is about

256 to use any method, act, or practice in violation of the provisions of this chapter, and that

257 proceedings would be in the public interest, the attorney general may bring an action against the

258 person to restrain or enjoin the use of such method, act, or practice.

259 (2) In addition to restraining or enjoining the use of a method, act, or practice, the court

260 may, after June 30, 2001, require the payment of:

261 (a) a civil fine of not more than \$15,000 for each separate intentional violation; and

262 (b) reasonable costs of investigation and litigation, including reasonable attorneys' fees.

263 Section 10. Section **63-2-202** is amended to read:

264 **63-2-202. Access to private, controlled, and protected documents.**

265 (1) Upon request, a governmental entity shall disclose a private record to:

266 (a) the subject of the record;

267 (b) the parent or legal guardian of an unemancipated minor who is the subject of the

268 record;

269 (c) the legal guardian of a legally incapacitated individual who is the subject of the record;

270 (d) any other individual who:

271 (i) has a power of attorney from the subject of the record;

272 (ii) submits a notarized release from the subject of the record or his legal representative

273 dated no more than 90 days before the date the request is made; or

274 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health

275 care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the

276 record is consistent with normal professional practice and medical ethics and Title 26, Chapter 45,  
277 Informed Consent for Genetic Testing Act; or

278 (e) any person to whom the record must be provided pursuant to court order as provided  
279 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14, Legislative  
280 Subpoena Powers.

281 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

282 (i) a physician, psychologist, certified social worker, insurance provider or agent, or a  
283 government public health agency upon submission of a release from the subject of the record that  
284 is dated no more than 90 days prior to the date the request is made and a signed acknowledgment  
285 of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

286 (ii) any person to whom the record must be disclosed pursuant to court order as provided  
287 in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

288 (b) A person who receives a record from a governmental entity in accordance with  
289 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,  
290 including the subject of the record.

291 (3) If there is more than one subject of a private or controlled record, the portion of the  
292 record that pertains to another subject shall be segregated from the portion that the requester is  
293 entitled to inspect.

294 (4) Upon request, a governmental entity shall disclose a protected record to:

295 (a) the person who submitted the record;

296 (b) any other individual who:

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

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

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

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

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

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

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

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

313 (c) the court has considered and, where appropriate, limited the requester's use and further  
314 disclosure of the record in order to protect privacy interests in the case of private or controlled  
315 records, business confidentiality interests in the case of records protected under Subsections  
316 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected  
317 records;

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

321 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
322 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

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

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

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

335 (v) secures from the researcher a written statement of his understanding of and agreement  
336 to the conditions of this subsection and his understanding that violation of the terms of this  
337 subsection may subject him to criminal prosecution under Section 63-2-801[-]; and

338           (vi) requires that the researcher complies with the provisions of Title 26, Chapter 45,  
339 Informed Consent for Genetic Testing Act, if the research involves genetic information.

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

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

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

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

352           (c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are  
353 private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section  
354 63-2-304 to persons other than those specified in this section.

355           Section 11. Section **63-2-302** is amended to read:

356           **63-2-302. Private records.**

357           (1) The following records are private:

358           (a) records concerning an individual's eligibility for unemployment insurance benefits,  
359 social services, welfare benefits, or the determination of benefit levels;

360           (b) records containing data on individuals describing medical history, diagnosis, condition,  
361 treatment, evaluation, private genetic information, as defined in Section 26-45-102, or similar  
362 medical data;

363           (c) records of publicly funded libraries that when examined alone or with other records  
364 identify a patron;

365           (d) records received or generated for a Senate or House Ethics Committee concerning any  
366 alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if  
367 the ethics committee meeting was closed to the public;

368           (e) records received or generated for a Senate confirmation committee concerning

369 character, professional competence, or physical or mental health of an individual:

370 (i) if prior to the meeting, the chair of the committee determines release of the records:

371 (A) reasonably could be expected to interfere with the investigation undertaken by the  
372 committee; or

373 (B) would create a danger of depriving a person of a right to a fair proceeding or impartial  
374 hearing;

375 (ii) after the meeting, if the meeting was closed to the public;

376 (f) records concerning a current or former employee of, or applicant for employment with,  
377 a governmental entity that would disclose that individual's home address, home telephone number,  
378 social security number, insurance coverage, marital status, or payroll deductions;

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

381 (h) that part of a voter registration record identifying a voter's driver license or  
382 identification card number, Social Security number, or last four digits of the Social Security  
383 number.

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

385 (a) records concerning a current or former employee of, or applicant for employment with  
386 a governmental entity, including performance evaluations and personal status information such as  
387 race, religion, or disabilities, but not including records that are public under Subsection  
388 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

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

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

391 (ii) information provided to the governmental entity for the purpose of complying with a  
392 financial assurance requirement; or

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

394 (c) records of independent state agencies if the disclosure of those records would conflict  
395 with the fiduciary obligations of the agency;

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

398 (e) records provided by the United States or by a government entity outside the state that  
399 are given with the requirement that the records be managed as private records, if the providing

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

401 (3) (a) As used in this Subsection (3), "medical records" means medical reports, records,  
402 statements, history, diagnosis, condition, treatment, and evaluation.

403 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
404 doctors, or affiliated entities are not private records or controlled records under Section 63-2-303  
405 when the records are sought:

406 (i) in connection with any legal or administrative proceeding in which the patient's  
407 physical, mental, or emotional condition is an element of any claim or defense; or

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

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

413 Section 12. **Effective date.**

414 This act takes effect on January 1, 2001.

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**Legislative Review Note**  
**as of 1-27-00 1:53 PM**

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

**Office of Legislative Research and General Counsel**