

RACIAL PROFILING

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

This act modifies the Uniform Driver License Act and related provisions regarding traffic law enforcement. The act provides for race information to be included on the driver license application and the state identification card application. The act requires the Department of Public Safety to establish a protected database to monitor traffic and pedestrian stops by peace officers and provides the Commission on Criminal and Juvenile Justice access to the information for evaluation. The act requires law enforcement agencies in the state to establish, on or before January 1, 2003, written policies prohibiting unconstitutional traffic enforcement. This act takes effect on July 1, 2002 and provides a repeal date of July 1, 2007 for certain sections of the act.

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

AMENDS:

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

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

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

53-1-106, as last amended by Chapters 42 and 202, Laws of Utah 2001

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

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

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

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

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

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

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

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

(1) The chief of police has the same authority as the sheriff within the boundaries of the municipality of appointment. The chief has authority to:

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

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

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

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

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

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

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

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

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

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

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

- (1) The sheriff shall:
 - (a) preserve the peace;
 - (b) make all lawful arrests;

(c) attend in person or by deputy the Supreme Court and the Court of Appeals when required or when the court is held within his county, all courts of record, and court commissioner and referee sessions held within his county, obey their lawful orders and directions, and comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

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

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

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

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

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

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

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

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

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

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

(n) perform as required by any contracts between the county and private contractors for

management, maintenance, operation, and construction of county jails entered into under the authority of Section 17-53-311;

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

(p) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention,

or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender; and

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

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

Section 4. Section **53-1-106** is amended to read:

53-1-106. Department duties -- Powers.

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

(a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules and Regulations, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6-102.5; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6-115;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking using funds appropriated under Section 58-37-20;

(d) as part of the annual budget hearings, provide the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under Section 58-37-20;

(e) meet with the Department of Administrative Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations, as required by Section 63A-6-107;

(f) provide assistance to the Crime Victims' Reparations Board and Reparations Office in conducting research or monitoring victims' programs, as required by Section 63-25a-405;

(g) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association;

(h) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63-5-5; ~~and~~

(i) implement the provisions of Section 53-2-202, the Emergency Management Assistance Compact[-]; and

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

(A) the agency employing the law enforcement officer;

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

(C) the race and gender of the law enforcement officer;

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

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

(ii) provide access to the database created in Subsection (1)(j)(i) to the Commission on Criminal and Juvenile Justice for the purpose of:

(A) evaluating the data;

(B) evaluating the effectiveness of the data collection process; and

(C) reporting and making recommendations to the Legislature; and

(iii) classify any personal identifying information of any individual, including law enforcement officers, in the database as protected records under Subsection 63-2-304(9).

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63-38-3.2.

Section 5. Section **53-1-108** is amended to read:

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

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

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

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

(c) make rules:

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

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

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

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

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

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

(2) The commissioner may:

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

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

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

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

prevention and participate in public or private partnerships, subject to Subsection (3);

(e) cooperate in applying for and distributing highway safety program funds; and

(f) receive and distribute federal funding to further the objectives of highway safety in compliance with the Federal Assistance Management Program Act.

(3) (a) Money may not be expended under Subsection (2)(d) for public safety education unless it is specifically appropriated by the Legislature for that purpose.

(b) Any recognized agency receiving state money for public safety shall file with the auditor of the state an itemized statement of all its receipts and expenditures.

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

53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(a) not more than three attempts to pass both the knowledge and skills tests within six

months of the date of the application;

- (b) a motorcycle learner permit if needed after the motorcycle knowledge test is passed; and
- (c) a motorcycle or taxicab endorsement when all tests are passed.

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

- (a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;
- (b) a commercial driver instruction permit if needed after the knowledge test is passed; and
- (c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

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

- (a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and
- (b) a CDL endorsement when all tests are passed.

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

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

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

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

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

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless the license is suspended, disqualified, denied, or has been

cancelled or revoked by the division, or the licensee updates the information or photograph on the license certificate.

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

(i) state the:

(A) full legal name[;];

(B) birth date[;];

(C) sex[;];

(D) between July 1, 2002 and July 1, 2007, race in accordance with the categories established by the United States Census Bureau;

(E) Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number[;]; and

(F) residence address of the applicant;

(ii) briefly describe the applicant;

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

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

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

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

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

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

(c) An applicant may not be denied a license for refusing to provide race information required under Subsection (9)(a)(i)(D).

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

- (a) current license certificate;
- (b) birth certificate;
- (c) Selective Service registration; or

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

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

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

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

(13) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3-105.

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

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

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

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

they intend to make an anatomical gift.

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

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

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

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

(a) loss;

(b) detriment; or

(c) injury.

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

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

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

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

(a) true and full legal name and address;

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

(c) Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number;

(d) place of birth;

(e) height and weight;

(f) color of eyes and hair;

(g) between July 1, 2002 and July 1, 2007, race in accordance with the categories established by the United States Census Bureau;

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

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

~~[(i)]~~ (j) an indication whether the applicant intends to make an anatomical gift under Title

26, Chapter 28, Uniform Anatomical Gift Act.

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

(4) An applicant may not be denied an identification card for refusing to provide race information required under Subsection (2)(g).

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

53-8-104. Superintendent's duties.

The superintendent shall:

- (1) divide the state highways into sections for the purpose of patrolling and policing;
- (2) employ peace officers known as highway patrol troopers to patrol or police the highways within this state and to enforce the state statutes as required;
- (3) establish ranks, grades, and positions in the Highway Patrol and designate the authority and responsibility in each rank, grade, and position;
- (4) establish for the Highway Patrol standards and qualifications and fix prerequisites of training, education, and experience for each rank, grade, and position;
- (5) appoint personnel to each rank, grade, and position necessary for the efficient operation and administration of the Highway Patrol;
- (6) devise and administer examinations designed to test applicants for positions with the Highway Patrol;
- (7) make rules governing the Highway Patrol as appear to the superintendent advisable;
- (8) discharge, demote, or temporarily suspend any employee in the Highway Patrol for cause;
- (9) prescribe the uniforms to be worn and the equipment to be used by employees of the Highway Patrol;
- (10) charge against each employee of the Highway Patrol the value of any property of the state lost or destroyed through the carelessness of the employee;
- (11) establish, with the approval of the Division of Finance, the terms and conditions under which expense allowance should be paid to any employee of the Highway Patrol while away from

his station;

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

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

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

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

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

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

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

(1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2007.

(2) Subsection 53-3-804(2)(g) is repealed July 1, 2007.

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

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

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

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

~~(5)~~ (7) Section 53A-3-602 is repealed July 1, 2002.

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

Section 10. **Effective date.**

This act takes effect on July 1, 2002.