

Senator David H. Steele proposes the following substitute bill:

PRIVATE RECORDS AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

This act modifies the Government Records Access and Management Act to expand records designated as private to include certain records in an electronic database for state online applications. The act clarifies the effect of a governmental entity's receipt of a record that contains the same information as an already held record with a different classification. The act provides an effective date.

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

AMENDS:

63-2-206 (Effective 07/01/02), as last amended by Chapter 8, Laws of Utah 2001, First Special Session

63-2-206 (Superseded 07/01/02), as last amended by Chapter 229, Laws of Utah 2000

63-2-302 (Effective 07/01/02), as last amended by Chapter 8, Laws of Utah 2001, First Special Session

63-2-302 (Superseded 07/01/02), as last amended by Chapter 48, Laws of Utah 1999

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

Section 1. Section **63-2-206 (Effective 07/01/02)** is amended to read:

63-2-206 (Effective 07/01/02). Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;



26 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record
27 is necessary to a proceeding or investigation;

28 (c) is authorized by state statute to conduct an audit and the record is needed for that
29 purpose; or

30 (d) is one that collects information for presentence, probationary, or parole purposes.

31 (2) A governmental entity may provide a private or controlled record or record series to
32 another governmental entity, a political subdivision, a government-managed corporation, the
33 federal government, or another state if the requesting entity provides written assurance:

34 (a) that the record or record series is necessary to the performance of the governmental
35 entity's duties and functions;

36 (b) that the record or record series will be used for a purpose similar to the purpose for
37 which the information in the record or record series was collected or obtained; and

38 (c) that the use of the record or record series produces a public benefit that outweighs the
39 individual privacy right that protects the record or record series.

40 (3) A governmental entity may provide a record or record series that is protected under
41 Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a
42 government-managed corporation, the federal government, or another state if:

43 (a) the record is necessary to the performance of the requesting entity's duties and
44 functions; or

45 (b) the record will be used for a purpose similar to the purpose for which the information
46 in the record or record series was collected or obtained.

47 (4) (a) A governmental entity shall provide a private, controlled, or protected record to
48 another governmental entity, a political subdivision, a government-managed corporation, the
49 federal government, or another state if the requesting entity:

50 (i) is entitled by law to inspect the record;

51 (ii) is required to inspect the record as a condition of participating in a state or federal
52 program or for receiving state or federal funds; or

53 (iii) is an entity described in Subsection(1)(a), (b), (c), or (d).

54 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection
55 63-2-304(4).

56 (5) Before disclosing a record or record series under this section to another governmental

57 entity, another state, the United States, or a foreign government, the originating governmental
58 entity shall:

59 (a) inform the recipient of the record's classification and the accompanying restrictions on
60 access; and

61 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
62 recipient's written agreement which may be by mechanical or electronic transmission that it will
63 abide by those restrictions on access unless a statute, federal regulation, or interstate agreement
64 otherwise governs the sharing of the record or record series.

65 (6) A governmental entity may disclose a record to another state, the United States, or a
66 foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with
67 the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty,
68 federal statute, compact, federal regulation, or state statute.

69 (7) ~~[(A)]~~ (a) Subject to Subsection (7)(b), a governmental entity receiving a record under
70 this section is subject to the same restrictions on disclosure of the [material] record as the
71 originating entity.

72 (b) The classification of a record already held by a governmental entity and the applicable
73 restrictions on disclosure of that record are not affected by the governmental entity's receipt under
74 this section of a record with a different classification that contains information that is also included
75 in the previously held record.

76 (8) Notwithstanding any other provision of this section, if a more specific court rule or
77 order, state statute, federal statute, or federal regulation prohibits or requires sharing information,
78 that rule, order, statute, or federal regulation controls.

79 (9) The following records may not be shared under this section:

80 (a) records held by the Division of Oil, Gas and Mining that pertain to any person and that
81 are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining;
82 and

83 (b) records of publicly funded libraries as described in Subsection 63-2-302(1)(a)(iii).

84 (10) Records that may evidence or relate to a violation of law may be disclosed to a
85 government prosecutor, peace officer, or auditor.

86 Section 2. Section **63-2-206 (Superseded 07/01/02)** is amended to read:

87 **63-2-206 (Superseded 07/01/02). Sharing records.**

88 (1) A governmental entity may provide a record that is private, controlled, or protected to
89 another governmental entity, a government-managed corporation, a political subdivision, the
90 federal government, or another state if the requesting entity:

91 (a) serves as a repository or archives for purposes of historical preservation, administrative
92 maintenance, or destruction;

93 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record
94 is necessary to a proceeding or investigation;

95 (c) is authorized by state statute to conduct an audit and the record is needed for that
96 purpose; or

97 (d) is one that collects information for presentence, probationary, or parole purposes.

98 (2) A governmental entity may provide a private or controlled record or record series to
99 another governmental entity, a political subdivision, a government-managed corporation, the
100 federal government, or another state if the requesting entity provides written assurance:

101 (a) that the record or record series is necessary to the performance of the governmental
102 entity's duties and functions;

103 (b) that the record or record series will be used for a purpose similar to the purpose for
104 which the information in the record or record series was collected or obtained; and

105 (c) that the use of the record or record series produces a public benefit that outweighs the
106 individual privacy right that protects the record or record series.

107 (3) A governmental entity may provide a record or record series that is protected under
108 Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a
109 government-managed corporation, the federal government, or another state if:

110 (a) the record is necessary to the performance of the requesting entity's duties and
111 functions; or

112 (b) the record will be used for a purpose similar to the purpose for which the information
113 in the record or record series was collected or obtained.

114 (4) (a) A governmental entity shall provide a private, controlled, or protected record to
115 another governmental entity, a political subdivision, a government-managed corporation, the
116 federal government, or another state if the requesting entity:

117 (i) is entitled by law to inspect the record;

118 (ii) is required to inspect the record as a condition of participating in a state or federal

119 program or for receiving state or federal funds; or

120 (iii) is an entity described in Subsection 63-2-206(1)(a), (b), (c), or (d).

121 (b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection
122 63-2-304(4).

123 (5) Before disclosing a record or record series under this section to another governmental
124 entity, another state, the United States, or a foreign government, the originating governmental
125 entity shall:

126 (a) inform the recipient of the record's classification and the accompanying restrictions on
127 access; and

128 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
129 recipient's written agreement which may be by mechanical or electronic transmission that it will
130 abide by those restrictions on access unless a statute, federal regulation, or interstate agreement
131 otherwise governs the sharing of the record or record series.

132 (6) A governmental entity may disclose a record to another state, the United States, or a
133 foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with
134 the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty,
135 federal statute, compact, federal regulation, or state statute.

136 (7) ~~[A]~~ (a) Subject to Subsection (7)(b), a governmental entity receiving a record under
137 this section is subject to the same restrictions on disclosure of the [material] record as the
138 originating entity.

139 (b) The classification of a record already held by a governmental entity and the applicable
140 restrictions on disclosure of that record are not affected by the governmental entity's receipt under
141 this section of a record with a different classification that contains information that is also included
142 in the previously held record.

143 (8) Notwithstanding any other provision of this section, if a more specific court rule or
144 order, state statute, federal statute, or federal regulation prohibits or requires sharing information,
145 that rule, order, statute, or federal regulation controls.

146 (9) The following records may not be shared under this section:

147 (a) records held by the Division of Oil, Gas and Mining that pertain to any person and that
148 are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining;
149 and

150 (b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

151 (10) Records that may evidence or relate to a violation of law may be disclosed to a
152 government prosecutor, peace officer, or auditor.

153 Section 3. Section **63-2-302 (Effective 07/01/02)** is amended to read:

154 **63-2-302 (Effective 07/01/02). Private records.**

155 (1) (a) The following records are private:

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

158 (ii) records containing data on individuals describing medical history, diagnosis, condition,
159 treatment, evaluation, or similar medical data;

160 (iii) records of publicly funded libraries that when examined alone or with other records
161 identify a patron;

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

165 (v) records received or generated for a Senate confirmation committee concerning
166 character, professional competence, or physical or mental health of an individual:

167 (A) if before the meeting, the chair of the committee determines release of the records:

168 (I) reasonably could be expected to interfere with the investigation undertaken by the
169 committee; or

170 (II) would create a danger of depriving a person of a right to a fair proceeding or impartial
171 hearing;

172 (B) after the meeting, if the meeting was closed to the public;

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

176 (vii) that part of a record indicating a person's social security number if provided under
177 Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; [~~and~~]

178 (viii) that part of a voter registration record identifying a voter's driver license or
179 identification card number, social security number, or last four digits of the social security
180 number[-]; and

181 (ix) a record that:
182 (A) contains information about an individual;
183 (B) is voluntarily provided by the individual; and
184 (C) goes into an electronic database that:
185 (I) is designated by and administered under the authority of the Chief Information Officer;
186 and
187 (II) acts as a repository of information about the individual that can be electronically
188 retrieved and used to facilitate the individual's online interaction with a state agency.

189 (b) For records declared private under Subsection (1)(a)(vi), a current or former employee
190 of a government entity may:

191 (i) give actual written notice of the employee's status as a government employee to each
192 agency of a government entity holding records that would disclose the employee's home address,
193 home telephone number, social security number, insurance coverage, marital status, or payroll
194 deductions; and

195 (ii) in the notice:

196 (A) provide evidence of qualifying employment;

197 (B) request assistance by the agency to identify the records containing information in
198 Subsection (1)(b)(i);

199 (C) designate each specific record that the applicant desires to be classified as private; and

200 (D) affirmatively request that the government entity holding those records classify them
201 as private.

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

203 (a) records concerning a current or former employee of, or applicant for employment with
204 a governmental entity, including performance evaluations and personal status information such as
205 race, religion, or disabilities, but not including records that are public under Subsection
206 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection(1)(a)(ii);

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

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

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

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

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

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

216 (e) records provided by the United States or by a government entity outside the state that
217 are given with the requirement that the records be managed as private records, if the providing
218 entity states in writing that the record would not be subject to public disclosure if retained by it.

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

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

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

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

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

231 Section 4. Section **63-2-302 (Superseded 07/01/02)** is amended to read:

232 **63-2-302 (Superseded 07/01/02). Private records.**

233 (1) The following records are private:

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

236 (b) records containing data on individuals describing medical history, diagnosis, condition,
237 treatment, evaluation, or similar medical data;

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

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

243 (e) records received or generated for a Senate confirmation committee concerning
244 character, professional competence, or physical or mental health of an individual:

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

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

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

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

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

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

256 (h) that part of a voter registration record identifying a voter's driver license or
257 identification card number, Social Security number, or last four digits of the Social Security
258 number[-]; and

259 (i) a record that:

260 (i) contains information about an individual;

261 (ii) is voluntarily provided by the individual; and

262 (iii) goes into an electronic database that:

263 (A) is designated by and administered under the authority of the Chief Information Officer;
264 and

265 (B) acts as a repository of information about the individual that can be electronically
266 retrieved and used to facilitate the individual's online interaction with a state agency.

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

268 (a) records concerning a current or former employee of, or applicant for employment with
269 a governmental entity, including performance evaluations and personal status information such as
270 race, religion, or disabilities, but not including records that are public under Subsection
271 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

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

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

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

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

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

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

281 (e) records provided by the United States or by a government entity outside the state that
282 are given with the requirement that the records be managed as private records, if the providing
283 entity states in writing that the record would not be subject to public disclosure if retained by it.

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

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

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

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

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

296 **Section 5. Effective date.**

297 This act takes effect May 6, 2002, except that the amendments to Section 63-2-206
298 (Effective 07/01/02) and Section 63-2-302 (Effective 07/01/02) take effect July 1, 2002.