

PRIVATE INVESTIGATOR AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions dealing with licensed private investigators and their accessing private records.

Highlighted Provisions:

This bill:

- ▶ limits access to protected motor vehicle and driver license records by a licensed private investigator by requiring the investigator to hold a valid agency or registrant license;
- ▶ provides that an apprentice private investigator may not directly obtain protected information from the **UTAH STATE TAX COMMISSION** Motor Vehicle Division or Driver License Division within the Department of Public Safety; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-1a-116, as last amended by Chapter 56, Laws of Utah 2003

53-3-109, as last amended by Chapters 85 and 289, Laws of Utah 2001

53-9-108, as last amended by Chapter 330, Laws of Utah 2003



28

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

30 Section 1. Section **41-1a-116** is amended to read:

31 **41-1a-116. Records -- Access to records -- Fees.**

32 (1) (a) All motor vehicle title and registration records of the division are protected
33 unless the division determines based upon a written request by the subject of the record that the
34 record is public.

35 (b) In addition to the provisions of this section, access to all division records is
36 permitted for all purposes described in the federal Driver's Privacy Protection Act of 1994, 18
37 U.S.C. Chapter 123.

38 (2) (a) Access to public records is determined by Section 63-2-201.

39 (b) A record designated as public under Subsection (1)(a) may be used for advertising
40 or solicitation purposes.

41 (3) Access to protected records, except as provided in Subsection (4), is determined by
42 Section 63-2-202.

43 (4) In addition to those persons granted access to protected records under Section
44 63-2-202, the division may disclose a protected record to a licensed private investigator,
45 holding a valid agency or registrant license, with a legitimate business need, a person with a
46 bona fide security interest, or the owner of a mobile home park subject to Subsection (5), only
47 upon receipt of a signed acknowledgment that the person receiving that protected record may
48 not:

49 (a) resell or disclose information from that record to any other person except as
50 permitted in the federal Driver's Privacy Protection Act of 1994; or

51 (b) use information from that record for advertising or solicitation purposes.

52 (5) The division may disclose the name or address, or both, of the lienholder or mobile
53 home owner of record, or both of them, to the owner of a mobile home park, if all of the
54 following conditions are met:

55 (a) a mobile home located within the mobile home park owner's park has been
56 abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

57 (b) the mobile home park owner has conducted a reasonable search, but is unable to
58 determine the name or address, or both, of the lienholder or mobile home owner of record; and

59 (c) the mobile home park owner has submitted a written statement to the division
60 explaining the mobile home park owner's efforts to determine the name or address, or both, of
61 the lienholder or mobile home owner of record before the mobile home park owner contacted
62 the division.

63 (6) The division may provide protected information to a statistic gathering entity under
64 Subsection (4) only in summary form.

65 (7) A person allowed access to protected records under Subsection (4) may request
66 motor vehicle title or registration information from the division regarding any person, entity, or
67 motor vehicle by submitting a written application on a form provided by the division.

68 (8) If a person regularly requests information for business purposes, the division may
69 by rule allow the information requests to be made by telephone and fees as required under
70 Subsection (9) charged to a division billing account to facilitate division service. The rules
71 shall require that the:

72 (a) division determine if the nature of the business and the volume of requests merit the
73 dissemination of the information by telephone;

74 (b) division determine if the credit rating of the requesting party justifies providing a
75 billing account; and

76 (c) requestor submit to the division an application that includes names and signatures
77 of persons authorized to request information by telephone and charge the fees to the billing
78 account.

79 (9) (a) The division shall charge a reasonable search fee determined under Section
80 63-38-3.2 for the research of each record requested.

81 (b) Fees may not be charged for furnishing information to persons necessary for their
82 compliance with this chapter.

83 (c) Law enforcement agencies have access to division records free of charge.

84 Section 2. Section **53-3-109** is amended to read:

85 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

86 (1) (a) Except as provided in this section, all records of the division shall be classified
87 and disclosed in accordance with Title 63, Chapter 2, Government Records Access and
88 Management Act.

89 (b) The division may only disclose personal identifying information:

90 (i) when the division determines it is in the interest of the public safety to disclose the
91 information; and

92 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
93 Chapter 123.

94 (c) The division may disclose personal identifying information to a licensed private
95 investigator holding a valid agency or registrant license, with a legitimate business need.

96 (2) A person who receives personal identifying information shall be advised by the
97 division that the person may not:

98 (a) disclose the personal identifying information from that record to any other person;
99 or

100 (b) use the personal identifying information from that record for advertising or
101 solicitation purposes.

102 (3) The division may:

103 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its
104 files or furnishing a report on the driving record of a person; and

105 (b) prepare under the seal of the division and deliver upon request, a certified copy of
106 any record of the division, and charge a fee under Section 63-38-3.2 for each document
107 authenticated.

108 (4) Each certified copy of a driving record furnished in accordance with this section is
109 admissible in any court proceeding in the same manner as the original.

110 (5) (a) A driving record furnished under this section may only report on the driving
111 record of a person for a period of six years.

112 (b) Subsection (5)(a) does not apply to court or law enforcement reports and to reports
113 of commercial driver license violations.

114 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
115 division may make rules to designate:

116 (a) what information shall be included in a report on the driving record of a person;

117 (b) the form of a report or copy of the report which may include electronic format;

118 (c) the form of a certified copy, as required under Section 53-3-216, which may include
119 electronic format;

120 (d) the form of a signature required under this chapter which may include electronic

121 format; and

122 (e) the form of written request to the division required under this chapter which may
123 include electronic format.

124 Section 3. Section **53-9-108** is amended to read:

125 **53-9-108. Qualifications for licensure.**

126 (1) (a) An applicant for an agency license under this chapter shall be at least 21 years of
127 age, a citizen or legal resident of the United States, and of good moral character.

128 (b) An applicant may not have been:

129 (i) convicted of a felony;

130 (ii) convicted of [~~any~~] an act involving illegally using, carrying, or possessing a
131 dangerous weapon;

132 (iii) convicted of [~~any~~] an act of personal violence or force on any person or convicted
133 of threatening to commit [~~any~~] an act of personal violence or force against another person;

134 (iv) convicted of [~~any~~] an act constituting dishonesty or fraud;

135 (v) convicted of [~~any~~] an act involving moral turpitude;

136 (vi) placed on probation or parole;

137 (vii) named in an outstanding arrest warrant; or

138 (viii) convicted of illegally obtaining or disclosing private, controlled, or protected
139 records as provided in Section 63-2-801.

140 (c) In assessing good moral character under Subsection (1)(b), the board shall consider
141 [~~any~~] mitigating circumstances presented by an applicant regarding information under
142 Subsections (1)(b)(vi) and (viii).

143 (d) If previously or currently licensed in another state or jurisdiction, the applicant shall
144 be in good standing within that state or jurisdiction.

145 (e) An applicant shall have completed a minimum of two years, or 2,000 hours, of
146 investigative experience that consists of actual work performed as a private investigator for a
147 private agency, the federal government, or a state, county, or municipal government.

148 (f) (i) An applicant for an agency license shall substantiate investigative work
149 experience claimed as years of qualifying experience and provide the exact details as to the
150 character and nature of the experience on a form prescribed by the department and certified by
151 the applicant's employers.

152 (ii) If the applicant is unable to supply written certification from an employer in whole
 153 or in part, the applicant may offer written certification from persons other than an employer
 154 covering the same subject matter for consideration by the board.

155 (iii) The applicant shall prove completion of the required experience to the satisfaction
 156 of the board and the board may independently verify ~~[any]~~ the certification offered on behalf of
 157 the applicant.

158 (2) (a) (i) An applicant for a registrant license shall meet all qualification standards of
 159 this section, except Subsection (1)(d).

160 (ii) An applicant shall have a minimum of one year, or 1,000 hours, of investigative
 161 experience that consists of actual work performed as a private investigator for a private agency,
 162 the federal government, a state, county, or municipal government.

163 (b) A licensed registrant shall only work as an employee of, or an independent
 164 contractor with, licensed agencies as provided in Subsection 53-9-102(19), and may not:

165 (i) advertise his services or conduct investigations for the general public; or

166 (ii) employ other private investigators or hire them as independent contractors.

167 (3) (a) An applicant for an apprentice license, lacking the experience required for a
 168 registrant license, shall meet all of the qualification standards in Subsection (1), except
 169 Subsection (1)(d) and complete an apprentice application.

170 (b) (i) An apprentice shall work under the direct supervision and guidance of a licensed
 171 agency, full-time for one year, or 1,000 hours, prior to eligibility for a registrant license.

172 (ii) A licensed apprentice shall only work under the direction of a licensed agency as
 173 provided in Subsection 53-9-102(5), and may not:

174 ~~[(†)]~~ (A) advertise his services or conduct investigations for the general public; ~~[(†)]~~

175 ~~[(†)]~~ (B) employ other private investigators~~[-];~~ or

176 (C) obtain information from the ~~H~~ UTAH STATE TAX COMMISSION ~~h~~ Motor Vehicle
 176a Division or Driver License Division
 177 within the Department of Public Safety, except the apprentice may utilize such information for
 178 a legitimate business need under the direct supervision of a licensed agency.

179 (4) (a) An applicant for an agency, registrant, or apprentice license may be eligible for
 180 a license without meeting all or part of the investigative work experience required by this
 181 section if the applicant:

182 (i) has a criminal justice degree from an accredited college or university;

183 (ii) is certified by Peace Officer Standards and Training; or
184 (iii) can substantiate other similar law enforcement or investigative training in the areas
185 set forth in Subsection 53-9-102(17).

186 (b) The board shall determine whether or not training may replace the work experience
187 requirement and to what extent.

Legislative Review Note
as of 1-28-04 8:02 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0122

Private Investigator Amendments

05-Feb-04

10:33 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst