

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Act.

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

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

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

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

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

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

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

(3) The division may:

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

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

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

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

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

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

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

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

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

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

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

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

53-9-108. Qualifications for licensure.

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

(b) An applicant may not have been:

(i) convicted of a felony;

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

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

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

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

(vi) placed on probation or parole;

(vii) named in an outstanding arrest warrant; or

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

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

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

(e) An applicant shall have completed a minimum of two years, or 2,000 hours, of

investigative experience that consists of actual work performed as a private investigator for a private agency, the federal government, or a state, county, or municipal government.

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

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

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

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

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

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

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

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

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

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

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

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

[~~(ii)~~] (B) employ other private investigators[~~;~~]; or

(C) obtain information from the Utah State Tax Commission Motor Vehicle Division or Driver License Division within the Department of Public Safety, except the apprentice may utilize such information for a legitimate business need under the direct supervision of a licensed agency.

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

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

(ii) is certified by Peace Officer Standards and Training; or

(iii) can substantiate other similar law enforcement or investigative training in the areas set forth in Subsection 53-9-102(17).

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