

PRIVACY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act related to privacy of certain information.

Highlighted Provisions:

This bill:

- ▶ prohibits a governmental entity from disclosing certain records to another state or the United States for purposes of any multi-state or national database containing personal information;

- ▶ requires a court that orders the disclosure of certain information to find by clear and convincing evidence that the interests favoring access outweigh the interests favoring restriction of access;

- ▶ prohibits a governmental entity from disclosing a person's Social Security number if the Social Security number was obtained from a license, certification, or registration application; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **63-2-202**, as last amended by Chapter 298, Laws of Utah 2003

29 ENACTS:

30 **63-2-309**, Utah Code Annotated 1953



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **63-2-202** is amended to read:

34 **63-2-202. Access to private, controlled, and protected documents.**

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

36 (a) the subject of the record;

37 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
38 record;

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

41 (d) any other individual who:

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

43 (ii) submits a notarized release from the subject of the record or ~~his~~ the subject's legal
44 representative dated no more than 90 days before the date the request is made; or

45 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
46 care provider, as defined in Section 26-33a-102, if releasing the record or information in the
47 record is consistent with normal professional practice and medical ethics; or

48 (e) any person to whom the record must be provided pursuant to:

49 (i) court order as provided in Subsection (7); or

50 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

51 Powers.

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

53 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
54 a government public health agency upon submission of:

55 (A) a release from the subject of the record that is dated no more than 90 days prior to
56 the date the request is made; and

57 (B) a signed acknowledgment of the terms of disclosure of controlled information as
58 provided by Subsection (2)(b); and

59 (ii) any person to whom the record must be disclosed pursuant to:

60 (A) a court order as provided in Subsection (7); or

61 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
62 Powers.

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

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

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

70 (a) the person who submitted the record;

71 (b) any other individual who:

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

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

77 (c) any person to whom the record must be provided pursuant to:

78 (i) a court order as provided in Subsection (7); or

79 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
80 Powers; or

81 (d) the owner of a mobile home park, subject to the conditions of Subsection
82 41-1a-116(5).

83 (5) [A] (a) Except as provided in Subsection (5)(b), a governmental entity may
84 disclose a private, controlled, or protected record to another governmental entity, political
85 subdivision, another state, the United States, or a foreign government only as provided by
86 Section 63-2-206.

87 (b) Notwithstanding Subsection (5)(a), a governmental entity may not disclose a
88 private, controlled, or protected record:

89 (i) to:

90 (A) another state; or

91 (B) the United States; and

92 (ii) for purposes of contributing to any multi-state or national database that contains
93 nonpublic personal information as defined in Section 13-37-102.

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

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

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

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

100 (c) the court has considered and, where appropriate, limited the requester's use and
101 further disclosure of the record in order to protect:

102 (i) privacy interests in the case of private or controlled records[;];

103 (ii) business confidentiality interests in the case of records protected under Subsections
104 63-2-304(1) and (2)[;]; and

105 (iii) privacy interests or the public interest in the case of other protected records;

106 (d) to the extent the record is properly classified private, controlled, or protected, the
107 interests favoring access, considering limitations thereon, outweigh, by clear and convincing
108 evidence, the interests favoring restriction of access; and

109 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
110 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

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

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

120 (iv) prohibits the researcher from disclosing the record in individually identifiable

121 form, except as provided in Subsection (8)(b), or from using the record for purposes other than
122 the research approved by the governmental entity; and

123 (v) secures from the researcher a written statement of his understanding of and
124 agreement to the conditions of this Subsection (8) and his understanding that violation of the
125 terms of this Subsection (8) may subject him to criminal prosecution under Section 63-2-801.

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

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

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

135 (b) Under Subsection 63-2-403(11)(b), the Records Committee may require the
136 disclosure of records that are private under Section 63-2-302, controlled under Section
137 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this
138 section.

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

142 Section 2. Section **63-2-309** is enacted to read:

143 **63-2-309. Restriction on disclosure of a Social Security number.**

144 Notwithstanding any other provision of this chapter, a governmental entity may not
145 disclose a record if:

146 (1) the record contains a person's Social Security number; and

147 (2) the governmental entity obtained the person's Social Security number through the
148 person's application for any license, certification, or registration, including a driver's license.

Legislative Review Note

as of 2-13-04 9:41 AM

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

Office of Legislative Research and General Counsel

State Impact

This bill would impact several federal public safety programs and programs within Office of Recovery Services and Division of Occupation and Professional Licensing. Utah would have to withdraw from "compact" agreements with other states that provide reciprocal licensure.

Federal law requires information sharing that is prohibited in this legislation. Failure to comply will result in automatic loss of funds by formula that double in the second year. The loss of funds in the Department of Transportation will be offset by a reduction in projects.

Department of Workforce Services programs would be effectively shut down with the change. The impact could be as high as \$184 million, although they think that federal law may preempt this change.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$0	\$100,000	\$0	\$0
Federal Funds	(\$9,800,000)	(\$18,800,000)	(\$10,920,000)	(\$21,040,000)
Commerce Service Fund	\$4,650,000	\$4,650,000	(\$60,000)	(\$60,000)
TOTAL	(\$5,150,000)	(\$14,050,000)	(\$10,980,000)	(\$21,100,000)

Individual and Business Impact

People who are licensed by "compact" will have to obtain licenses under Utah law.
