

Representative Mike Thompson proposes the following substitute bill:

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 the Multistate Anti-Terrorism Information Exchange database; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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



26 (1) Upon request, a governmental entity shall disclose a private record to:
27 (a) the subject of the record;
28 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
29 record;
30 (c) the legal guardian of a legally incapacitated individual who is the subject of the
31 record;
32 (d) any other individual who:
33 (i) has a power of attorney from the subject of the record;
34 (ii) submits a notarized release from the subject of the record or [his] the subject's legal
35 representative dated no more than 90 days before the date the request is made; or
36 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
37 care provider, as defined in Section 26-33a-102, if releasing the record or information in the
38 record is consistent with normal professional practice and medical ethics; or
39 (e) any person to whom the record must be provided pursuant to:
40 (i) court order as provided in Subsection (7); or
41 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
42 Powers.

43 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
44 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
45 a government public health agency upon submission of:
46 (A) a release from the subject of the record that is dated no more than 90 days prior to
47 the date the request is made; and
48 (B) a signed acknowledgment of the terms of disclosure of controlled information as
49 provided by Subsection (2)(b); and
50 (ii) any person to whom the record must be disclosed pursuant to:
51 (A) a court order as provided in Subsection (7); or
52 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
53 Powers.

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

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

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

61 (a) the person who submitted the record;

62 (b) any other individual who:

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

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

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

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

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

71 Powers; or

72 (d) the owner of a mobile home park, subject to the conditions of Subsection

73 41-1a-116(5).

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

78 (b) Notwithstanding Subsection (5)(a), a governmental entity may not disclose a
79 private, controlled, or protected record to the Multistate Anti-Terrorism Information Exchange
80 database.

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

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

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

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

87 (c) the court has considered and, where appropriate, limited the requester's use and

88 further disclosure of the record in order to protect:

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

90 (ii) business confidentiality interests in the case of records protected under Subsections
91 63-2-304(1) and (2)[;]; and

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

93 (d) to the extent the record is properly classified private, controlled, or protected, the
94 interests favoring access, considering limitations thereon, outweigh the interests favoring
95 restriction of access; and

96 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
97 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

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

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

107 (iv) prohibits the researcher from disclosing the record in individually identifiable
108 form, except as provided in Subsection (8)(b), or from using the record for purposes other than
109 the research approved by the governmental entity; and

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

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

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

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

122 (b) Under Subsection 63-2-403(11)(b), the Records Committee may require the
123 disclosure of records that are private under Section 63-2-302, controlled under Section
124 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this
125 section.

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

Legislative Review Note
as of 2-23-04 5:26 PM

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

Office of Legislative Research and General Counsel