

1 **GOVERNMENT RECORDS ACCESS AND**
2 **MANAGEMENT ACT REQUIREMENTS**
3 **REGARDING ANIMAL IDENTIFICATION**
4 **PROGRAM**

5 2005 GENERAL SESSION

6 STATE OF UTAH

7 **Sponsor: Craig W. Buttars**

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Government Records Access and Management Act to classify
12 Department of Agriculture and Food records relating to the National Animal
13 Identification System or state programs for the identification, tracing, or control of
14 livestock diseases as private records.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ modifies the Government Records Access and Management Act to provide private
18 record classification to Department of Agriculture and Food records relating to:
- 19 • the National Animal Identification System; and
 - 20 • state programs providing for the identification, tracing, or control of livestock
21 diseases.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **63-2-304**, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004



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

31 Section 1. Section **63-2-304** is amended to read:

32 **63-2-304. Protected records.**

33 The following records are protected if properly classified by a governmental entity:

34 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
35 has provided the governmental entity with the information specified in Section 63-2-308;

36 (2) commercial information or nonindividual financial information obtained from a
37 person if:

38 (a) disclosure of the information could reasonably be expected to result in unfair
39 competitive injury to the person submitting the information or would impair the ability of the
40 governmental entity to obtain necessary information in the future;

41 (b) the person submitting the information has a greater interest in prohibiting access
42 than the public in obtaining access; and

43 (c) the person submitting the information has provided the governmental entity with
44 the information specified in Section 63-2-308;

45 (3) commercial or financial information acquired or prepared by a governmental entity
46 to the extent that disclosure would lead to financial speculations in currencies, securities, or
47 commodities that will interfere with a planned transaction by the governmental entity or cause
48 substantial financial injury to the governmental entity or state economy;

49 (4) records the disclosure of which could cause commercial injury to, or confer a
50 competitive advantage upon a potential or actual competitor of, a commercial project entity as
51 defined in Subsection 11-13-103(4);

52 (5) test questions and answers to be used in future license, certification, registration,
53 employment, or academic examinations;

54 (6) records the disclosure of which would impair governmental procurement
55 proceedings or give an unfair advantage to any person proposing to enter into a contract or
56 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
57 of a person to see bids submitted to or by a governmental entity after bidding has closed;

58 (7) records that would identify real property or the appraisal or estimated value of real

59 or personal property, including intellectual property, under consideration for public acquisition
60 before any rights to the property are acquired unless:

61 (a) public interest in obtaining access to the information outweighs the governmental
62 entity's need to acquire the property on the best terms possible;

63 (b) the information has already been disclosed to persons not employed by or under a
64 duty of confidentiality to the entity;

65 (c) in the case of records that would identify property, potential sellers of the described
66 property have already learned of the governmental entity's plans to acquire the property;

67 (d) in the case of records that would identify the appraisal or estimated value of
68 property, the potential sellers have already learned of the governmental entity's estimated value
69 of the property; or

70 (e) the property under consideration for public acquisition is a single family residence
71 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
72 the property as required under Section 78-34-4.5;

73 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
74 compensated transaction of real or personal property including intellectual property, which, if
75 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
76 of the subject property, unless:

77 (a) the public interest in access outweighs the interests in restricting access, including
78 the governmental entity's interest in maximizing the financial benefit of the transaction; or

79 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
80 the value of the subject property have already been disclosed to persons not employed by or
81 under a duty of confidentiality to the entity;

82 (9) records created or maintained for civil, criminal, or administrative enforcement
83 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
84 release of the records:

85 (a) reasonably could be expected to interfere with investigations undertaken for
86 enforcement, discipline, licensing, certification, or registration purposes;

87 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
88 proceedings;

89 (c) would create a danger of depriving a person of a right to a fair trial or impartial

90 hearing;

91 (d) reasonably could be expected to disclose the identity of a source who is not
92 generally known outside of government and, in the case of a record compiled in the course of
93 an investigation, disclose information furnished by a source not generally known outside of
94 government if disclosure would compromise the source; or

95 (e) reasonably could be expected to disclose investigative or audit techniques,
96 procedures, policies, or orders not generally known outside of government if disclosure would
97 interfere with enforcement or audit efforts;

98 (10) records the disclosure of which would jeopardize the life or safety of an
99 individual;

100 (11) records the disclosure of which would jeopardize the security of governmental
101 property, governmental programs, or governmental recordkeeping systems from damage, theft,
102 or other appropriation or use contrary to law or public policy;

103 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
104 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
105 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

106 (13) records that, if disclosed, would reveal recommendations made to the Board of
107 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
108 Board of Pardons and Parole, or the Department of Human Services that are based on the
109 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
110 jurisdiction;

111 (14) records and audit workpapers that identify audit, collection, and operational
112 procedures and methods used by the State Tax Commission, if disclosure would interfere with
113 audits or collections;

114 (15) records of a governmental audit agency relating to an ongoing or planned audit
115 until the final audit is released;

116 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
117 litigation that are not available under the rules of discovery;

118 (17) records disclosing an attorney's work product, including the mental impressions or
119 legal theories of an attorney or other representative of a governmental entity concerning
120 litigation;

121 (18) records of communications between a governmental entity and an attorney
122 representing, retained, or employed by the governmental entity if the communications would be
123 privileged as provided in Section 78-24-8;

124 (19) personal files of a legislator, including personal correspondence to or from a
125 member of the Legislature, provided that correspondence that gives notice of legislative action
126 or policy may not be classified as protected under this section;

127 (20) (a) records in the custody or control of the Office of Legislative Research and
128 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
129 legislation or contemplated course of action before the legislator has elected to support the
130 legislation or course of action, or made the legislation or course of action public; and

131 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
132 Office of Legislative Research and General Counsel is a public document unless a legislator
133 asks that the records requesting the legislation be maintained as protected records until such
134 time as the legislator elects to make the legislation or course of action public;

135 (21) research requests from legislators to the Office of Legislative Research and
136 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
137 in response to these requests;

138 (22) drafts, unless otherwise classified as public;

139 (23) records concerning a governmental entity's strategy about collective bargaining or
140 pending litigation;

141 (24) records of investigations of loss occurrences and analyses of loss occurrences that
142 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
143 Uninsured Employers' Fund, or similar divisions in other governmental entities;

144 (25) records, other than personnel evaluations, that contain a personal recommendation
145 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
146 personal privacy, or disclosure is not in the public interest;

147 (26) records that reveal the location of historic, prehistoric, paleontological, or
148 biological resources that if known would jeopardize the security of those resources or of
149 valuable historic, scientific, educational, or cultural information;

150 (27) records of independent state agencies if the disclosure of the records would
151 conflict with the fiduciary obligations of the agency;

152 (28) records of a public institution of higher education regarding tenure evaluations,
153 appointments, applications for admissions, retention decisions, and promotions, which could be
154 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
155 Meetings, provided that records of the final decisions about tenure, appointments, retention,
156 promotions, or those students admitted, may not be classified as protected under this section;

157 (29) records of the governor's office, including budget recommendations, legislative
158 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
159 policies or contemplated courses of action before the governor has implemented or rejected
160 those policies or courses of action or made them public;

161 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
162 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
163 recommendations in these areas;

164 (31) records provided by the United States or by a government entity outside the state
165 that are given to the governmental entity with a requirement that they be managed as protected
166 records if the providing entity certifies that the record would not be subject to public disclosure
167 if retained by it;

168 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
169 except as provided in Section 52-4-7;

170 (33) records that would reveal the contents of settlement negotiations but not including
171 final settlements or empirical data to the extent that they are not otherwise exempt from
172 disclosure;

173 (34) memoranda prepared by staff and used in the decision-making process by an
174 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
175 other body charged by law with performing a quasi-judicial function;

176 (35) records that would reveal negotiations regarding assistance or incentives offered
177 by or requested from a governmental entity for the purpose of encouraging a person to expand
178 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
179 person or place the governmental entity at a competitive disadvantage, but this section may not
180 be used to restrict access to a record evidencing a final contract;

181 (36) materials to which access must be limited for purposes of securing or maintaining
182 the governmental entity's proprietary protection of intellectual property rights including patents,

183 copyrights, and trade secrets;

184 (37) the name of a donor or a prospective donor to a governmental entity, including a
185 public institution of higher education, and other information concerning the donation that could
186 reasonably be expected to reveal the identity of the donor, provided that:

187 (a) the donor requests anonymity in writing;

188 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
189 classified protected by the governmental entity under this Subsection (37); and

190 (c) except for public institutions of higher education, the governmental unit to which
191 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
192 has no regulatory or legislative authority over the donor, a member of his immediate family, or
193 any entity owned or controlled by the donor or his immediate family;

194 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
195 73-18-13;

196 (39) a notification of workers' compensation insurance coverage described in Section
197 34A-2-205;

198 (40) (a) the following records of a public institution of education, which have been
199 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of
200 the institution:

201 (i) unpublished lecture notes;

202 (ii) unpublished research notes and data;

203 (iii) unpublished manuscripts;

204 (iv) creative works in process;

205 (v) scholarly correspondence; and

206 (vi) confidential information contained in research proposals; and

207 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;

208 (41) (a) records in the custody or control of the Office of Legislative Auditor General
209 that would reveal the name of a particular legislator who requests a legislative audit prior to the
210 date that audit is completed and made public; and

211 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
212 Office of the Legislative Auditor General is a public document unless the legislator asks that
213 the records in the custody or control of the Office of Legislative Auditor General that would

214 reveal the name of a particular legislator who requests a legislative audit be maintained as
215 protected records until the audit is completed and made public;
216 (42) records that provide detail as to the location of an explosive, including a map or
217 other document that indicates the location of:
218 (a) a production facility; or
219 (b) a magazine;
220 (43) information contained in the database described in Section 62A-3-311.1;
221 (44) information contained in the Management Information System and Licensing
222 Information System described in Title 62A, Chapter 4a, Child and Family Services;
223 (45) information regarding National Guard operations or activities in support of the
224 National Guard's federal mission;
225 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in
226 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; ~~and~~
227 (47) information regarding food security, risk, and vulnerability assessments performed
228 by the Department of Agriculture and Food[-]; and
229 (48) records of the Department of Agriculture and Food relating to the National
230 Animal Identification System or any other program that provides for the identification, tracing,
231 or control of livestock diseases, including any program established under Title 4, Chapter 24,
232 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Utah Livestock Inspection and
233 Quarantine.

Legislative Review Note
as of 1-20-05 12:57 PM

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 HB0226

**Government Records Access and Management Act Requirements Regarding
Animal Identification Program**

25-Jan-05
1:05 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst