

1 **PROTECTION OF CERTAIN VOTER**
2 **INFORMATION**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Scott L Wyatt

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Government Records Access and Management Act and the
11 Election Code to provide certain privacy protections to judges who register to vote and
12 who file for a retention election.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ requires the state court administrator to notify the lieutenant governor and the
16 county clerk of a justice's or judge's county of residence on the appointment of a
17 judge and notify them that portions of the justice's or judge's voter registration
18 record are private;

19 ▶ requires a justice or judge who changes a residential address or leaves office to
20 notify the lieutenant governor and the county clerk of the justice's or judge's county
21 of residence;

22 ▶ allows a justice or judge to file a declaration of candidacy for retention using the
23 justice's or judge's business address, business telephone number, and county of
24 residence in lieu of home address and home telephone number;

25 ▶ classifies as a private record that part of a justice's or judge's voter registration
26 record that identifies the justice's or judge's date of birth, place of birth, current or
27 former home address, home telephone number, mobile phone number, voting



28 precinct, voter identification number, party affiliation, or voting history;

29 ▶ provides that a person who gains access to or obtains a copy of any private,

30 controlled, or protected record to which the person is not legally entitled and who

31 uses the record to harass or threaten the subject of the record is guilty of a class B

32 misdemeanor; and

33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **20A-2-308**, as enacted by Chapter 311, Laws of Utah 1994

41 **20A-12-201**, as last amended by Chapter 308, Laws of Utah 2001

42 **63-2-302**, as last amended by Chapters 90 and 173, Laws of Utah 2004

43 **63-2-801**, as last amended by Chapter 280, Laws of Utah 1992



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

46 Section 1. Section **20A-2-308** is amended to read:

47 **20A-2-308. Lieutenant governor and county clerks to preserve records.**

48 (1) As used in this section:

49 (a) "Voter registration records" means all records concerning the implementation of
50 programs and activities conducted for the purpose of ensuring that the official register is
51 accurate and current.

52 (b) "Voter registration records" does not mean records that:

53 (i) relate to a person's decision to decline to register to vote; and

54 (ii) identify the particular public assistance agency, discretionary voter registration
55 agency, or Driver License Division through which a particular voter registered to vote.

56 (2) The lieutenant governor and each county clerk shall:

57 (a) preserve for at least two years all records relating to voter registration, including:

58 (i) the official register; and

59 (ii) the names and addresses of all persons to whom the notice required by Section
60 20A-2-306 was sent and a notation as to whether or not the person responded to the notice;

61 (b) make the records available for public inspection in accordance with Title 63,
62 Chapter 2, Government Records Access and Management Act; and

63 (c) allow the records to be photocopied for a reasonable cost.

64 (3) (a) Upon the appointment of a justice or judge of a court of record or a judge of a
65 court not of record, the state court administrator shall provide notice that portions of the
66 justice's or judge's voter registration record are private in accordance with Subsection
67 63-2-301(1)(i) to:

68 (i) the lieutenant governor; and

69 (ii) the clerk of the county in which the justice or judge resides.

70 (b) If a justice or judge subsequently changes residential address or leaves office, the
71 justice or judge shall provide notice of the change to the persons specified under Subsections
72 (3)(a)(i) and (ii).

73 Section 2. Section **20A-12-201** is amended to read:

74 **20A-12-201. Judicial appointees -- Retention elections.**

75 (1) (a) Each appointee to a court of record is subject to an unopposed retention election
76 at the first general election held more than three years after the judge or justice was appointed.

77 (b) After the first retention election:

78 (i) each Supreme Court justice shall be on the regular general election ballot for an
79 unopposed retention election every tenth year; and

80 (ii) each judge of other courts of record shall be on the regular general election ballot
81 for an unopposed retention election every sixth year.

82 (2) (a) Each justice or judge of a court of record who wishes to retain office shall, in
83 the year the justice or judge is subject to a retention election:

84 (i) file a declaration of candidacy as if a candidate for multi-county office in
85 accordance with Section 20A-9-202, except that the justice or judge may provide a business
86 address, business telephone number, and county of residence in lieu of a home address and
87 home telephone number if required on the declaration of candidacy; and

88 (ii) pay a filing fee of \$50.

89 (b) Each county justice judge who wishes to retain office shall, in the year the justice or

90 judge is subject to a retention election:

91 (i) file a declaration of candidacy as if a candidate for county office in accordance with
92 Section 20A-9-202, except that the county justice judge may provide a business address,
93 business telephone number, and county of residence in lieu of a home address and home
94 telephone number if required on the declaration of candidacy; and

95 (ii) pay a filing fee of \$25.

96 (3) (a) The lieutenant governor shall, by September 1 of each regular general election
97 year:

98 (i) transmit a certified list containing the names of the justices of the Supreme Court
99 and judges of the Court of Appeals declaring their candidacy to the county clerk of each
100 county; and

101 (ii) transmit a certified list containing the names of judges of other courts declaring
102 their candidacy to the county clerk of each county in the geographic division in which the judge
103 filing the declaration holds office.

104 (b) Each county clerk shall place the names of justices and judges standing for
105 retention election in the nonpartisan section of the ballot.

106 (4) At the general election, the ballots shall contain, as to each justice or judge of any
107 court to be voted on in the county, the following question:

108 "Shall _____ (name of justice or judge) be retained in the
109 office of _____?" (name of office, such as "Justice of the Supreme
110 Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the
111 Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District";
112 "County Justice Court Judge of (name of county) County")

113 Yes ()

114 No ()."

115 (5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge
116 is retained for the term of office provided by law.

117 (b) If the justice or judge does not receive more yes votes than no votes, the justice or
118 judge is not retained, and a vacancy exists in the office on the first Monday in January after the
119 regular general election.

120 (6) A justice or judge not retained is ineligible for appointment to the office for which

121 the justice or judge was defeated until after the expiration of that term of office.

122 Section 3. Section **63-2-302** is amended to read:

123 **63-2-302. Private records.**

124 (1) The following records are private:

125 (a) records concerning an individual's eligibility for unemployment insurance benefits,
126 social services, welfare benefits, or the determination of benefit levels;

127 (b) records containing data on individuals describing medical history, diagnosis,
128 condition, treatment, evaluation, or similar medical data;

129 (c) records of publicly funded libraries that when examined alone or with other records
130 identify a patron;

131 (d) records received or generated for a Senate or House Ethics Committee concerning
132 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
133 meeting, if the ethics committee meeting was closed to the public;

134 (e) records received or generated for a Senate confirmation committee concerning
135 character, professional competence, or physical or mental health of an individual:

136 (i) if prior to the meeting, the chair of the committee determines release of the records:

137 (A) reasonably could be expected to interfere with the investigation undertaken by the
138 committee; or

139 (B) would create a danger of depriving a person of a right to a fair proceeding or
140 impartial hearing; and

141 (ii) after the meeting, if the meeting was closed to the public;

142 (f) employment records concerning a current or former employee of, or applicant for
143 employment with, a governmental entity that would disclose that individual's home address,
144 home telephone number, Social Security number, insurance coverage, marital status, or payroll
145 deductions;

146 (g) records or parts of records under Section 63-2-302.5 that a current or former
147 employee identifies as private according to the requirements of that section;

148 (h) that part of a record indicating a person's Social Security number or federal
149 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
150 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

151 (i) (i) that part of a voter registration record identifying a voter's driver license or

152 identification card number, Social Security number, or last four digits of the Social Security
153 number; and

154 (ii) if the voter is a justice or judge of a court of record or a judge of a court not of
155 record, that part of a voter registration record identifying the justice's or judge's date of birth,
156 place of birth, current or former home address, home telephone number, mobile phone number,
157 voting precinct, voter identification number, party affiliation, or voting history;

158 (j) a record that:

159 (i) contains information about an individual;

160 (ii) is voluntarily provided by the individual; and

161 (iii) goes into an electronic database that:

162 (A) is designated by and administered under the authority of the Chief Information
163 Officer; and

164 (B) acts as a repository of information about the individual that can be electronically
165 retrieved and used to facilitate the individual's online interaction with a state agency;

166 (k) information provided to the Commissioner of Insurance under:

167 (i) Subsection 31A-23a-115(2)(a); or

168 (ii) Subsection 31A-23a-302(3); and

169 (l) information obtained through a criminal background check under Title 11, Chapter
170 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

171 (2) The following records are private if properly classified by a governmental entity:

172 (a) records concerning a current or former employee of, or applicant for employment
173 with a governmental entity, including performance evaluations and personal status information
174 such as race, religion, or disabilities, but not including records that are public under Subsection
175 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection (1)(b);

176 (b) records describing an individual's finances, except that the following are public:

177 (i) records described in Subsection 63-2-301(1);

178 (ii) information provided to the governmental entity for the purpose of complying with
179 a financial assurance requirement; or

180 (iii) records that must be disclosed in accordance with another statute;

181 (c) records of independent state agencies if the disclosure of those records would
182 conflict with the fiduciary obligations of the agency;

183 (d) other records containing data on individuals the disclosure of which constitutes a
184 clearly unwarranted invasion of personal privacy; and

185 (e) records provided by the United States or by a government entity outside the state
186 that are given with the requirement that the records be managed as private records, if the
187 providing entity states in writing that the record would not be subject to public disclosure if
188 retained by it.

189 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
190 records, statements, history, diagnosis, condition, treatment, and evaluation.

191 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
192 doctors, or affiliated entities are not private records or controlled records under Section
193 63-2-303 when the records are sought:

194 (i) in connection with any legal or administrative proceeding in which the patient's
195 physical, mental, or emotional condition is an element of any claim or defense; or

196 (ii) after a patient's death, in any legal or administrative proceeding in which any party
197 relies upon the condition as an element of the claim or defense.

198 (c) Medical records are subject to production in a legal or administrative proceeding
199 according to state or federal statutes or rules of procedure and evidence as if the medical
200 records were in the possession of a nongovernmental medical care provider.

201 Section 4. Section **63-2-801** is amended to read:

202 **63-2-801. Criminal penalties.**

203 (1) (a) A public employee or other person who has lawful access to any private,
204 controlled, or protected record under this chapter, and who intentionally discloses or provides a
205 copy of a private, controlled, or protected record to any person knowing that such disclosure is
206 prohibited, is guilty of a class B misdemeanor.

207 (b) It is a defense to prosecution under Subsection (1)(a) that the actor released private,
208 controlled, or protected information in the reasonable belief that the disclosure of the
209 information was necessary to expose a violation of law involving government corruption, abuse
210 of office, or misappropriation of public funds or property.

211 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
212 lawfully been released to the recipient if it had been properly classified.

213 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a

214 copy of any private, controlled, or protected record to which he is not legally entitled is guilty
215 of a class B misdemeanor.

216 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
217 information, or copy after the fact and without prior knowledge of or participation in the false
218 pretenses, bribery, or theft.

219 (3) A public employee who intentionally refuses to release a record the disclosure of
220 which the employee knows is required by law or by final unappealed order from a
221 governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

222 (4) In cases not amounting to a violation of Subsection (2)(a), a person who gains
223 access to or obtains a copy of any private, controlled, or protected record to which the person is
224 not legally entitled and who uses the record to harass or threaten the subject of the record is
225 guilty of a class B misdemeanor.

Legislative Review Note

as of 12-6-05 12:50 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel