

**Representative David Litvack** proposes the following substitute bill:

1                                   **CHILD ABUSE AND NEGLECT REGISTRY -**  
2                                   **MANAGEMENT AND LICENSING**  
3                                   **INFORMATION SYSTEMS AMENDMENTS**

4                                   2008 GENERAL SESSION

5                                   STATE OF UTAH

6                                   **Chief Sponsor: Gene Davis**

7                                   House Sponsor: Wayne A. Harper

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8  
9                   **LONG TITLE**

10                   **General Description:**

11                   This bill amends provisions of the Utah Human Services Code and the Government  
12                   Records Access and Management Act relating to the Management Information System  
13                   maintained by the Department of Human Services.

14                   **Highlighted Provisions:**

15                   This bill:

- 16                   ▶ modifies provisions related to access to records in the Management Information  
17                   System;
- 18                   ▶ establishes a procedure for providing an alleged perpetrator of child abuse, neglect,  
19                   or dependancy with notice and an opportunity to challenge:
- 20                   • a finding of unsupported or without merit by the division; and
  - 21                   • the listing of the finding in the Management Information System;
- 22                   ▶ provides that proceedings for judicial review of a final agency action relating to a  
23                   report on the Management Information System are closed to the public;
- 24                   ▶ grants rulemaking authority to the Judicial Council to ensure the confidentiality of  
25                   the proceedings described above; and



26           ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           None

31 **Utah Code Sections Affected:**

32 AMENDS:

33           **62A-4a-412**, as last amended by Laws of Utah 2006, Chapters 77 and 281

34           **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77

35           **63-2-202**, as last amended by Laws of Utah 2005, Chapter 201

36           **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

37           **78A-6-317**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

40           Section 1. Section **62A-4a-412** is amended to read:

41           **62A-4a-412. Reports and information confidential.**

42           (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as  
43 well as any other information in the possession of the division obtained as the result of a report  
44 are private, protected, or controlled records under Title 63, Chapter 2, Government Records  
45 Access and Management Act, and may only be made available to:

46           (a) a police or law enforcement agency investigating a report of known or suspected  
47 child abuse or neglect;

48           (b) a physician who reasonably believes that a child may be the subject of abuse or  
49 neglect;

50           (c) an agency that has responsibility or authority to care for, treat, or supervise a minor  
51 who is the subject of a report;

52           (d) a contract provider that has a written contract with the division to render services to  
53 a minor who is the subject of a report;

54           (e) ~~[any]~~ except as provided in Subsection 63-2-202(10), a subject of the report, the  
55 natural parents of the child, and the guardian ad litem;

56           (f) a court, upon a finding that access to the records may be necessary for the

57 determination of an issue before the court, provided that in a divorce, custody, or related  
58 proceeding between private parties, the record alone is:

59 (i) limited to objective or undisputed facts that were verified at the time of the  
60 investigation; and

61 (ii) devoid of conclusions drawn by the division or any of the division's workers on the  
62 ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or  
63 neglect of another person;

64 (g) an office of the public prosecutor or its deputies in performing an official duty;

65 (h) a person authorized by a Children's Justice Center, for the purposes described in  
66 Section 67-5b-102;

67 (i) a person engaged in bona fide research, when approved by the director of the  
68 division, if the information does not include names and addresses;

69 (j) the State Office of Education, acting on behalf of itself or on behalf of a school  
70 district, for the purpose of evaluating whether an individual should be permitted to obtain or  
71 retain a license as an educator or serve as an employee or volunteer in a school, limited to  
72 information with substantiated findings involving an alleged sexual offense, an alleged felony  
73 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,  
74 Chapter 5, Offenses Against the Person, and with the understanding that the office must  
75 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond  
76 to the report before making a decision concerning licensure or employment;

77 (k) any person identified in the report as a perpetrator or possible perpetrator of child  
78 abuse or neglect, after being advised of the screening prohibition in Subsection (2);

79 (l) except as provided in Subsection 63-2-202(10), a person filing a petition for a child  
80 protective order on behalf of a child who is the subject of the report; and

81 (m) a licensed child-placing agency or person who is performing a preplacement  
82 adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

83 (2) (a) A person, unless listed in Subsection (1), may not request another person to  
84 obtain or release a report or any other information in the possession of the division obtained as  
85 a result of the report that is available under Subsection (1)(k) to screen for potential  
86 perpetrators of child abuse or neglect.

87 (b) A person who requests information knowing that it is a violation of Subsection

88 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

89 (3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division  
90 and law enforcement officials shall ensure the anonymity of the person or persons making the  
91 initial report and any others involved in its subsequent investigation.

92 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but  
93 including this chapter and Title 63, Chapter 2, Government Records Access and Management  
94 Act, when the division makes a report or other information in its possession available under  
95 Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from  
96 the report or other information only the names, addresses, and telephone numbers of  
97 individuals or specific information that could:

- 98 (i) identify the referent;
- 99 (ii) impede a criminal investigation; or
- 100 (iii) endanger a person's safety.

101 (4) Any person who wilfully permits, or aides and abets the release of data or  
102 information obtained as a result of this part, in the possession of the division or contained on  
103 any part of the Management Information System, in violation of this part or Sections  
104 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

105 (5) The physician-patient privilege is not a ground for excluding evidence regarding a  
106 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in  
107 good faith pursuant to this part.

108 (6) A child-placing agency or person who receives a report in connection with a  
109 preplacement adoptive evaluation pursuant to Section 78-30-3.5:

- 110 (a) may provide this report to the person who is the subject of the report; and
- 111 (b) may provide this report to a person who is performing a preplacement adoptive  
112 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed  
113 child-placing agency or to an attorney seeking to facilitate an adoption.

114 Section 2. Section **62A-4a-1009** is amended to read:

115 **62A-4a-1009. Notice and opportunity to challenge finding of supported,**  
116 **unsupported, or without merit in Management Information System -- Right of judicial**  
117 **review.**

118 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency

119 action to a person with respect to whom the division makes a [~~supported~~] finding of supported,  
120 unsupported, or without merit. In addition, if the alleged perpetrator is under the age of 18, the  
121 division shall:

122 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and  
123 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that  
124 lives at a different address, unless there is good cause, as defined by rule, for not sending a  
125 notice to a parent or guardian.

126 (b) Nothing in this section may be construed as affecting:

127 (i) the manner in which the division conducts an investigation; or

128 (ii) the use or effect, in any other setting, of a supported finding by the division at the  
129 completion of an investigation for any purpose other than for notification under Subsection (1)  
130 (a).

131 (2) Subsection (1) does not apply to a person who has been served with notice under  
132 Subsection 62A-4a-1005(1)(a).

133 (3) The notice described in Subsection (1), relating to a supported finding, shall state:

134 (a) that the division has conducted an investigation regarding alleged child abuse,  
135 neglect, or dependency;

136 (b) that the division has made a supported finding of abuse, neglect, or dependency;

137 (c) that facts gathered by the division support the supported finding;

138 (d) that the person has the right to request:

139 (i) a copy of the report; and

140 (ii) an opportunity to challenge the supported finding by the division; and

141 (e) that failure to request an opportunity to challenge the supported finding within 30  
142 days of receiving the notice will result in an unappealable supported finding of child abuse,  
143 neglect, or dependency unless the person can show good cause for why compliance within the  
144 30-day requirement was virtually impossible or unreasonably burdensome.

145 (4) (a) A person may make a request to challenge a supported finding within 30 days of  
146 a notice being received under this section.

147 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative  
148 Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b,  
149 Administrative Procedures Act.

150 (5) (a) In an adjudicative proceeding held pursuant to this section, based on a challenge  
151 to a supported finding, the division shall have the burden of proving, by a preponderance of the  
152 evidence, that child abuse, neglect, or dependency occurred and that the alleged perpetrator was  
153 substantially responsible for the abuse or neglect that occurred.

154 (b) Any party shall have the right of judicial review of final agency action under this  
155 section, regardless of whether the finding is supported, unsupported, or without merit, in  
156 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

157 (c) Proceedings for judicial review of a final agency action under this section shall be  
158 closed to the public.

159 (d) The Judicial Council shall make rules, in accordance with Title 63, Chapter 46a,  
160 Utah Administrative Rulemaking Act, that ensure the confidentiality of the proceedings  
161 described in Subsection (5)(c) and the records related to the proceedings.

162 (6) (a) If, after receiving a report of alleged child abuse, neglect, or dependency, the  
163 division makes a finding that the report is unsupported or without merit, the division shall  
164 serve notice of the finding, described in Subsection (6)(b), on the alleged perpetrator.

165 (b) The notice described in Subsection (6)(a):

166 (i) shall state that:

167 (A) the division has conducted an investigation regarding a report of alleged child  
168 abuse, neglect, or dependency;

169 (B) the division has made a finding that the report is unsupported or without merit;

170 (C) the alleged perpetrator's name, information, and the report have been entered into  
171 the Management Information System, together with an indication that the report was found to  
172 be unsupported or without merit;

173 (D) the information described in Subsection (6)(b)(i)(C):

174 (I) will not be included in the Licensing Information System; and

175 (II) may not be accessed and used to disqualify the alleged perpetrator from adopting a  
176 child or being licensed by:

177 (Aa) the department;

178 (Bb) a human services licensee;

179 (Cc) a child care provider or program; or

180 (Dd) a covered health care facility;

181 (E) the alleged perpetrator has the rights described in Subsection (7); and  
182 (F) failure to take the action described in Subsection (7)(a) within two years after  
183 service of the notice will result in the action described in Subsection (7)(b);  
184 (ii) shall include a general statement of the nature of the findings; and  
185 (iii) may not include:  
186 (A) the name of a victim or witness; or  
187 (B) any privacy information related to the victim or a witness.  
188 (7) (a) Upon receipt of the notice described in Subsection (6), the alleged perpetrator  
189 shall have the right to:  
190 (i) except as provided in Subsection (7)(c), submit a request for agency review to the  
191 division, requesting one or both of the following:  
192 (A) if the finding described in Subsection (6)(a) is a finding of unsupported, that the  
193 division reduce the finding to a finding of without merit; or  
194 (B) if the finding described in Subsection (6)(a) is a finding of unsupported or without  
195 merit, that the division remove the alleged perpetrator's name and information, the finding, and  
196 the report to which it relates, from the Management Information System; or  
197 (ii) sign a written consent to:  
198 (A) the finding made under Subsection (6)(a); and  
199 (B) entry into the Management Information System of the alleged perpetrator's name  
200 and information, the finding, and the report.  
201 (b) The alleged perpetrator's name and information, the finding, and the report shall  
202 remain in the Management Information System:  
203 (i) if the alleged perpetrator fails to submit a request for agency review under  
204 Subsection (7)(a)(i) within two years after service of the notice described in Subsection (6);  
205 (ii) during the time that the division awaits a request for agency review from the  
206 alleged perpetrator pursuant to Subsection (7)(a); and  
207 (iii) unless:  
208 (A) in response to a request for agency review, the division determines, under  
209 Subsection (7)(a)(i)(B), to remove the alleged perpetrator's name and information, including  
210 the finding and the report, from the Management Information System;  
211 (B) the division refuses to take the action described in Subsection (7)(b)(iii)(A) and the

212 division's decision is overturned; or

213 (C) a court orders that the perpetrator's name and information, the finding, and the  
214 report be removed from the Management Information System.

215 (c) The alleged perpetrator has no right to submit a request for agency review to the  
216 division under Subsection (7)(a)(i) if a court previously held a hearing on the same alleged  
217 incident of abuse, neglect, or dependency, pursuant to the filing of a petition under Section  
218 78A-6-304, by some other party.

219 (d) Consent under Subsection (7)(a)(ii) by a child shall be given by the child's parent or  
220 guardian.

221 (e) In considering a request described in Subsection (7)(a)(i)(A), the agency shall have  
222 the burden of proving, by a preponderance of the evidence, that the finding should be  
223 unsupported, rather than without merit.

224 (f) In considering a request described in Subsection (7)(a)(i)(B), the person who  
225 submitted the request for review shall have the burden of proving, by a preponderance of the  
226 evidence, that the person's interest in having the report and finding removed from the  
227 Management Information System outweighs the interest of the division or an alleged victim in  
228 maintaining the report and finding in the Management Information System.

229 (g) If the division refuses to take the action requested under Subsection (7)(a)(i), the  
230 person who submitted the request for agency review may challenge the decision pursuant to  
231 Title 63, Chapter 46b, Administrative Procedures Act.

232 ~~[(6)]~~ (8) Except as otherwise provided in this chapter, an alleged perpetrator who, after  
233 receiving notice, fails to challenge a ~~[supported]~~ finding of supported, unsupported, or without  
234 merit, in accordance with this section:

235 (a) may not further challenge the finding; and

236 (b) shall have no right to:

237 (i) agency review of the finding;

238 (ii) an adjudicative hearing on the finding; or

239 (iii) judicial review of the finding.

240 ~~[(7)]~~ (9) (a) Except as provided in Subsection ~~[(7)]~~ (9)(b), an alleged perpetrator may  
241 not make a request under Subsection (4) or (7)(a)(i) to challenge a ~~[supported]~~ finding of  
242 supported, unsupported, or without merit, if a court of competent jurisdiction entered a finding,



243 in a proceeding in which the alleged perpetrator was a party, that:

244 (i) the alleged perpetrator is substantially responsible for the abuse, neglect, or  
245 dependency which was also the subject of the supported finding[-]; or

246 (ii) the report was unsubstantiated or without merit.

247 (b) Subsection [~~(7)~~] (9)(a) does not apply to pleas in abeyance or diversion agreements.

248 (c) An adjudicative proceeding under Subsection (5) or (7) may be stayed during the  
249 time a judicial action on the same matter is pending.

250 [~~(8)~~] (10) Pursuant to Section 78-3a-320, an adjudicative proceeding on a supported  
251 finding of a type of abuse or neglect that does not constitute a severe type of child abuse or  
252 neglect may be joined in the juvenile court with an adjudicative proceeding on a supported  
253 finding of a severe type of child abuse or neglect.

254 Section 3. Section **63-2-202** is amended to read:

255 **63-2-202. Access to private, controlled, and protected documents.**

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

257 (a) the subject of the record;

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

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

262 (d) any other individual who:

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

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

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

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

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

271 (ii) a legislative subpoena as provided in Title 36, Chapter 14.

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

273 (i) a physician, psychologist, certified social worker, insurance provider or producer, or

274 a government public health agency upon submission of:

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

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

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

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

281 (B) a legislative subpoena as provided in Title 36, Chapter 14.

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

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

288 (4) Upon request, and except as provided in Subsection (10), a governmental entity  
289 shall disclose a protected record to:

290 (a) the person who submitted the record;

291 (b) any other individual who:

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

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

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

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

299 (ii) a legislative subpoena as provided in Title 36, Chapter 14; or

300 (d) the owner of a mobile home park, subject to the conditions of Subsection  
301 41-1a-116(5).

302 (5) A governmental entity may disclose a private, controlled, or protected record to  
303 another governmental entity, political subdivision, another state, the United States, or a foreign  
304 government only as provided by Section 63-2-206.

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

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

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

310 (b) the court has considered the merits of the request for access to the record; and

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

313 (i) privacy interests in the case of private or controlled records;

314 (ii) business confidentiality interests in the case of records protected under Subsection  
315 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

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

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

320 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
321 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

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

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

326 (ii) determines that:

327 (A) the proposed research is bona fide; and

328 (B) the value of the research outweighs the infringement upon personal privacy;

329 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of  
330 the records; and

331 (B) requires the removal or destruction of the individual identifiers associated with the  
332 records as soon as the purpose of the research project has been accomplished;

333 (iv) prohibits the researcher from:

334 (A) disclosing the record in individually identifiable form, except as provided in  
335 Subsection (8)(b); or

336 (B) using the record for purposes other than the research approved by the governmental  
337 entity; and

338 (v) secures from the researcher a written statement of the researcher's understanding of  
339 and agreement to the conditions of this Subsection (8) and the researcher's understanding that  
340 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
341 under Section 63-2-801.

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

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

348 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may  
349 disclose to persons other than those specified in this section records that are:

350 (i) private under Section 63-2-302; or

351 (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for  
352 business confidentiality has been made under Section 63-2-308.

353 (b) Under Subsection 63-2-403(11)(b), the records committee may require the  
354 disclosure to persons other than those specified in this section of records that are:

355 (i) private under Section 63-2-302;

356 (ii) controlled under Section 63-2-303; or

357 (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for  
358 business confidentiality has been made under Section 63-2-308.

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

362 (10) A record contained in the Management Information System, created in Section  
363 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be  
364 disclosed to any person except the person who is alleged in the report to be a perpetrator of  
365 abuse, neglect, or dependency.

366 Section 4. Section **63-2-304** is amended to read:

367 **63-2-304. Protected records.**

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

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

371 (2) commercial information or nonindividual financial information obtained from a  
372 person if:

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

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

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

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

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

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

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

393 (7) records that would identify real property or the appraisal or estimated value of real  
394 or personal property, including intellectual property, under consideration for public acquisition  
395 before any rights to the property are acquired unless:

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

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

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

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

405 (e) the property under consideration for public acquisition is a single family residence  
406 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
407 the property as required under Section 78B-6-505;

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

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

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

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

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

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

424 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
425 hearing;

426 (d) reasonably could be expected to disclose the identity of a source who is not  
427 generally known outside of government and, in the case of a record compiled in the course of  
428 an investigation, disclose information furnished by a source not generally known outside of

429 government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

456 (18) records of communications between a governmental entity and an attorney  
457 representing, retained, or employed by the governmental entity if the communications would be  
458 privileged as provided in Section 78B-1-137;

459 (19) (a) (i) personal files of a state legislator, including personal correspondence to or

460 from a member of the Legislature; and  
461 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
462 legislative action or policy may not be classified as protected under this section; and  
463 (b) (i) an internal communication that is part of the deliberative process in connection  
464 with the preparation of legislation between:  
465 (A) members of a legislative body;  
466 (B) a member of a legislative body and a member of the legislative body's staff; or  
467 (C) members of a legislative body's staff; and  
468 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
469 legislative action or policy may not be classified as protected under this section;  
470 (20) (a) records in the custody or control of the Office of Legislative Research and  
471 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
472 legislation or contemplated course of action before the legislator has elected to support the  
473 legislation or course of action, or made the legislation or course of action public; and  
474 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
475 Office of Legislative Research and General Counsel is a public document unless a legislator  
476 asks that the records requesting the legislation be maintained as protected records until such  
477 time as the legislator elects to make the legislation or course of action public;  
478 (21) research requests from legislators to the Office of Legislative Research and  
479 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
480 in response to these requests;  
481 (22) drafts, unless otherwise classified as public;  
482 (23) records concerning a governmental entity's strategy about collective bargaining or  
483 pending litigation;  
484 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
485 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
486 Uninsured Employers' Fund, or similar divisions in other governmental entities;  
487 (25) records, other than personnel evaluations, that contain a personal recommendation  
488 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
489 personal privacy, or disclosure is not in the public interest;  
490 (26) records that reveal the location of historic, prehistoric, paleontological, or



491 biological resources that if known would jeopardize the security of those resources or of  
492 valuable historic, scientific, educational, or cultural information;

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

495 (28) records of an institution within the state system of higher education defined in  
496 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
497 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
498 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
499 the final decisions about tenure, appointments, retention, promotions, or those students  
500 admitted, may not be classified as protected under this section;

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

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

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

512 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
513 except as provided in Section 52-4-206;

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

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

520 (35) records that would reveal negotiations regarding assistance or incentives offered  
521 by or requested from a governmental entity for the purpose of encouraging a person to expand

522 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
523 person or place the governmental entity at a competitive disadvantage, but this section may not  
524 be used to restrict access to a record evidencing a final contract;

525 (36) materials to which access must be limited for purposes of securing or maintaining  
526 the governmental entity's proprietary protection of intellectual property rights including patents,  
527 copyrights, and trade secrets;

528 (37) the name of a donor or a prospective donor to a governmental entity, including an  
529 institution within the state system of higher education defined in Section 53B-1-102, and other  
530 information concerning the donation that could reasonably be expected to reveal the identity of  
531 the donor, provided that:

532 (a) the donor requests anonymity in writing;

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

535 (c) except for an institution within the state system of higher education defined in  
536 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
537 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
538 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
539 by the donor or the donor's immediate family;

540 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
541 73-18-13;

542 (39) a notification of workers' compensation insurance coverage described in Section  
543 34A-2-205;

544 (40) (a) the following records of an institution within the state system of higher  
545 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
546 or received by or on behalf of faculty, staff, employees, or students of the institution:

547 (i) unpublished lecture notes;

548 (ii) unpublished notes, data, and information:

549 (A) relating to research; and

550 (B) of:

551 (I) the institution within the state system of higher education defined in Section  
552 53B-1-102; or

- 553 (II) a sponsor of sponsored research;
- 554 (iii) unpublished manuscripts;
- 555 (iv) creative works in process;
- 556 (v) scholarly correspondence; and
- 557 (vi) confidential information contained in research proposals;
- 558 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 559 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 560 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 561 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 562 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 563 date that audit is completed and made public; and
- 564 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 565 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 566 the records in the custody or control of the Office of Legislative Auditor General that would
- 567 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 568 protected records until the audit is completed and made public;
- 569 (42) records that provide detail as to the location of an explosive, including a map or
- 570 other document that indicates the location of:
- 571 (a) a production facility; or
- 572 (b) a magazine;
- 573 (43) information contained in the database described in Section 62A-3-311.1;
- 574 (44) information contained in the Management Information System and Licensing
- 575 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 576 (45) information regarding National Guard operations or activities in support of the
- 577 National Guard's federal mission;
- 578 (46) records provided by any pawn or secondhand business to a law enforcement
- 579 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 580 Secondhand Merchandise Transaction Information Act;
- 581 (47) information regarding food security, risk, and vulnerability assessments performed
- 582 by the Department of Agriculture and Food;
- 583 (48) except to the extent that the record is exempt from this chapter pursuant to Section

584 63-2-106, records related to an emergency plan or program prepared or maintained by the  
585 Division of Homeland Security the disclosure of which would jeopardize:

586 (a) the safety of the general public; or

587 (b) the security of:

588 (i) governmental property;

589 (ii) governmental programs; or

590 (iii) the property of a private person who provides the Division of Homeland Security  
591 information;

592 (49) records of the Department of Agriculture and Food relating to the National  
593 Animal Identification System or any other program that provides for the identification, tracing,  
594 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
595 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
596 Quarantine;

597 (50) as provided in Section 26-39-109:

598 (a) information or records held by the Department of Health related to a complaint  
599 regarding a child care program or residential child care which the department is unable to  
600 substantiate; and

601 (b) information or records related to a complaint received by the Department of Health  
602 from an anonymous complainant regarding a child care program or residential child care; ~~and~~

603 (51) unless otherwise classified as public under Section 63-2-301 and except as  
604 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
605 personal mobile phone number, if:

606 (a) the individual is required to provide the information in order to comply with a law,  
607 ordinance, rule, or order of a government entity; and

608 (b) the subject of the record has a reasonable expectation that this information will be  
609 kept confidential due to:

610 (i) the nature of the law, ordinance, rule, or order; and

611 (ii) the individual complying with the law, ordinance, rule, or order[-]; and

612 (52) records contained in the Management Information System, created in Section  
613 62A-4a-1003.

614 Section 5. Section **78A-6-317** is amended to read:

615 **78A-6-317. All proceedings -- Persons entitled to be present.**

616 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice  
617 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any  
618 relative providing care for the child, are:

619 (a) entitled to notice of, and to be present at, each hearing and proceeding held under  
620 this part, including administrative and citizen reviews; and

621 (b) have a right to be heard at each hearing and proceeding described in Subsection  
622 (1)(a).

623 (2) A child shall be represented at each hearing by the guardian ad litem appointed to  
624 the child's case by the court. The child has a right to be present at each hearing, subject to the  
625 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

626 (3) (a) The parent or guardian of a child who is the subject of a petition under this part  
627 has the right to be represented by counsel, and to present evidence, at each hearing.

628 (b) When it appears to the court that a parent or guardian of the child desires counsel  
629 but is financially unable to afford and cannot for that reason employ counsel, and the child has  
630 been placed in out-of-home care, or the petitioner is recommending that the child be placed in  
631 out-of-home care, the court shall appoint counsel.

632 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court  
633 shall order that the child be represented by a guardian ad litem, in accordance with Section  
634 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance  
635 with the requirements of that section, at the shelter hearing and at all subsequent court and  
636 administrative proceedings, including any proceeding for termination of parental rights in  
637 accordance with Part 5, Termination of Parental Rights Act.

638 (5) ~~[Notwithstanding]~~ (a) Except as provided in Subsection (5)(b), and  
639 notwithstanding any other provision of law[;];

640 (i) counsel for all parties to the action shall be given access to all records, maintained  
641 by the division or any other state or local public agency, that are relevant to the abuse, neglect,  
642 or dependency proceeding under this chapter[; ~~If~~]; and

643 (ii) if the natural parent of a child is representing himself, the natural parent shall have  
644 access to [those records. The above disclosures] the records described in Subsection (5)(a)(i).

645 (b) The disclosures described in Subsection (5)(a) are not required in the following

646 circumstances:

647 ~~[(a) The] (i) subject to Subsection (5)(c), the division or other state or local public~~  
648 ~~agency did not originally create the record being requested[. In those circumstances, the person~~  
649 ~~making the request under this section shall be informed of the following:]~~;

650 ~~[(i) the existence of all records in the possession of the division or any other state or~~  
651 ~~local public agency;]~~

652 ~~[(ii) the name and address of the person or agency that originally created the record;~~  
653 ~~and]~~

654 ~~[(iii) that the person must seek access to the record from the person or agency that~~  
655 ~~originally created the record.]~~

656 ~~[(b)] (ii) disclosure of the record would jeopardize the life or physical safety of a child~~  
657 ~~who has been a victim of child abuse or neglect, or any person who provided substitute care for~~  
658 ~~the child[.];~~

659 ~~[(c)] (iii) disclosure of the record would jeopardize the anonymity of the person or~~  
660 ~~persons making the initial report of abuse or neglect or any others involved in the subsequent~~  
661 ~~investigation[.];~~

662 ~~[(d)] (iv) disclosure of the record would jeopardize the life or physical safety of a~~  
663 ~~person who has been a victim of domestic violence[.]; or~~

664 ~~(v) the record is a report maintained in the Management Information System, for which~~  
665 ~~a finding of unsubstantiated, unsupported, or without merit has been made, unless the person~~  
666 ~~requesting the information is the alleged perpetrator in the report or counsel for the alleged~~  
667 ~~perpetrator in the report.~~

668 ~~(c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the~~  
669 ~~person making the request of the following:~~

670 ~~(i) the existence of all records in the possession of the division or any other state or~~  
671 ~~local public agency;~~

672 ~~(ii) the name and address of the person or agency that originally created the record; and~~

673 ~~(iii) that the person must seek access to the record from the person or agency that~~  
674 ~~originally created the record.~~

675 (6) (a) The appropriate foster care citizen review board shall be given access to all  
676 records, maintained by the division or any other state or local public agency, that are relevant to

677 an abuse, neglect, or dependency proceeding under this chapter.

678 (b) Representatives of the appropriate foster care citizen review board are entitled to be  
679 present at each hearing held under this part, but notice is not required to be provided.