

1                                   **ARCHIVES AND GRAMA REVISIONS**

2   2009 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Douglas C. Aagard**

5                                   Senate Sponsor: Brent H. Goodfellow

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions in the Archives and Records Service chapter and in the  
10 Government Records Access and Management Act.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ adds a title section for the Archives and Records Service chapter;
- 14           ▶ provides definitions;
- 15           ▶ modifies language to comply with standardized definitions;
- 16           ▶ provides that intentional and knowing destruction or mutilation of the record-copy  
17 of a record in violation of a retention schedule is a class B misdemeanor;
- 18           ▶ provides cross references between the Archives and Records Service chapter and  
19 the Government Records Access and Management Act;
- 20           ▶ clarifies that an employee of a governmental entity may be disciplined or fired for  
21 intentionally and knowingly destroying or mutilating a record in violation of a  
22 retention schedule; and
- 23           ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63A-12-105**, as renumbered and amended by Laws of Utah 2008, Chapter 382

31 **63G-2-803**, as renumbered and amended by Laws of Utah 2008, Chapter 382

32 **63G-2-804**, as renumbered and amended by Laws of Utah 2008, Chapter 382

33 ENACTS:

34 **63A-12-100**, Utah Code Annotated 1953



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

37 Section 1. Section **63A-12-100** is enacted to read:

38 **CHAPTER 12. ARCHIVES AND RECORDS SERVICE**

39 **63A-12-100. Title -- Definitions.**

40 (1) This chapter is known as "Archives and Records Service."

41 (2) As used in this chapter, "governmental entity" has the same meaning as in Section  
42 63G-2-103.

43 Section 2. Section **63A-12-105** is amended to read:

44 **63A-12-105. Records are property of the state -- Disposition -- Penalties for**  
45 **intentional mutilation or destruction.**

46 (1) All records created or maintained by a state governmental entity [~~of the state~~] are  
47 the property of the state and shall not be mutilated, destroyed, or otherwise damaged or  
48 disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2,  
49 Government Records Access and Management Act.

50 (2) (a) Except as provided in Subsection (2)(b), all records created or maintained by a  
51 political subdivision of the state are the property of the state and shall not be mutilated,  
52 destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this  
53 chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

54 (b) Records which constitute a valuable intellectual property shall be the property of  
55 the political subdivision.

56 (c) The state archives may, upon request from a political subdivision, take custody of  
57 any record series of the political subdivision. A political subdivision which no longer wishes

58 to maintain custody of a record which must be retained under the political subdivision's  
 59 retention schedule or the state archive's retention schedule shall transfer it to the state archives  
 60 for safekeeping and management.

61 (3) (a) It is unlawful for a ~~[governmental entity or political subdivision]~~ person to  
 62 intentionally mutilate, destroy, or to otherwise damage or dispose of the record-copy of a  
 63 record ~~[series]~~ knowing that ~~[such]~~ the mutilation, destruction, ~~[or]~~ damage, or disposal is in  
 64 contravention of ~~[the political subdivision's or the state archive's]:~~

65 (i) a governmental entity's properly adopted retention schedule; or

66 (ii) if no retention schedule has been properly adopted by the governmental entity, the  
 67 model retention schedule, as provided in Section 63G-2-604.

68 (b) Violation of this Subsection (3) is a class B misdemeanor.

69 (c) An employee of a governmental entity that violates this Subsection (3) may be  
 70 subject to disciplinary action as provided under Section 63G-2-804.

71 Section 3. Section **63G-2-803** is amended to read:

72 **63G-2-803. No individual liability for certain decisions of a governmental entity.**

73 (1) Neither the governmental entity ~~[or political subdivision]~~, nor any officer or  
 74 employee of the governmental entity ~~[or political subdivision]~~, is liable for damages resulting  
 75 from the release of a record where the person or government requesting the record presented  
 76 evidence of authority to obtain the record even if it is subsequently determined that the  
 77 requester had no authority.

78 (2) Neither the governmental entity ~~[or political subdivision]~~, nor any officer or  
 79 employee of the governmental entity ~~[or political subdivision]~~, is liable for damages arising  
 80 from the negligent disclosure of records classified as private under Subsection  
 81 63G-2-302(1)(f) unless:

82 (a) the disclosure was of employment records maintained by the governmental entity;

83 or

84 (b) the current or former government employee had previously filed the notice  
 85 required by Section 63G-2-303 and:

86 (i) the government entity did not take reasonable steps to preclude access or  
87 distribution of the record; or

88 (ii) the release of the record was otherwise willfully or grossly negligent.

89 (3) A mailing from a government agency to an individual who has filed an application  
90 under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A,  
91 Chapter 12, Archives and Records Service.

92 Section 4. Section **63G-2-804** is amended to read:

93 **63G-2-804. Violation of provision of chapter -- Penalties for intentional**  
94 **mutilation or destruction -- Disciplinary action.**

95 A governmental entity [~~or political subdivision~~] may take disciplinary action which  
96 may include suspension or discharge against any employee of the governmental entity [~~or~~  
97 ~~political subdivision~~] who intentionally violates any provision of this chapter or Subsection  
98 63A-12-105(3).