

PENALTIES FOR UNAUTHORIZED USE OF RECORDS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Public Safety Code by amending provisions relating to the unauthorized use of certain records.

Highlighted Provisions:

This bill:

- ▶ provides that the Motor Vehicle Division shall disclose a protected record in certain circumstances;

- ▶ provides that the knowing or intentional unauthorized access, use, disclosure, or dissemination of records created or maintained by the Motor Vehicle Division, the Driver License Division, or the Criminal Investigations and Technical Services Division is a class B misdemeanor;

- ▶ provides that the director of the Motor Vehicle Division, the Driver License Division, the Utah Bureau of Criminal Identification, and the Commissioner of Public Safety shall be informed of the unauthorized use of certain records; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-1a-116, as last amended by Laws of Utah 2009, Chapter 183

30 53-3-109, as last amended by Laws of Utah 2009, Chapter 183

31 53-10-108, as last amended by Laws of Utah 2010, Chapter 58

32 53-10-111, as renumbered and amended by Laws of Utah 1998, Chapter 263

33

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

35 Section 1. Section 41-1a-116 is amended to read:

36 **41-1a-116. Records -- Access to records -- Fees.**

37 (1) (a) All motor vehicle title and registration records of the division are protected
38 unless the division determines based upon a written request by the subject of the record that the
39 record is public.

40 (b) In addition to the provisions of this section, access to all division records is
41 permitted for all purposes described in the federal Driver's Privacy Protection Act of 1994, 18
42 U.S.C. Chapter 123.

43 (2) (a) Access to public records is determined by Section 63G-2-201.

44 (b) A record designated as public under Subsection (1)(a) may be used for advertising
45 or solicitation purposes.

46 (3) Access to protected records, except as provided in Subsection (4), is determined by
47 Section 63G-2-202.

48 (4) (a) In addition to those persons granted access to protected records under Section
49 63G-2-202, the division [~~may~~] shall disclose a protected record to a licensed private
50 investigator, holding a valid agency or registrant license, with a legitimate business need, a
51 person with a bona fide security interest, or the owner of a mobile home park subject to
52 Subsection (5), only upon receipt of a signed acknowledgment that the person receiving that
53 protected record may not:

54 [~~(a)~~] (i) resell or disclose information from that record to any other person except as
55 permitted in the federal Driver's Privacy Protection Act of 1994; or

56 [~~(b)~~] (ii) use information from that record for advertising or solicitation purposes.

57 (b) A legitimate business need under Subsection (4)(a) does not include the collection

58 of a debt.

59 (5) The division may disclose the name or address, or both, of the lienholder or mobile
60 home owner of record, or both of them, to the owner of a mobile home park, if all of the
61 following conditions are met:

62 (a) a mobile home located within the mobile home park owner's park has been
63 abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

64 (b) the mobile home park owner has conducted a reasonable search, but is unable to
65 determine the name or address, or both, of the lienholder or mobile home owner of record; and

66 (c) the mobile home park owner has submitted a written statement to the division
67 explaining the mobile home park owner's efforts to determine the name or address, or both, of
68 the lienholder or mobile home owner of record before the mobile home park owner contacted
69 the division.

70 (6) The division may provide protected information to a statistic gathering entity under
71 Subsection (4) only in summary form.

72 (7) A person allowed access to protected records under Subsection (4) may request
73 motor vehicle title or registration information from the division regarding any person, entity, or
74 motor vehicle by submitting a written application on a form provided by the division.

75 (8) If a person regularly requests information for business purposes, the division may
76 by rule allow the information requests to be made by telephone and fees as required under
77 Subsection (9) charged to a division billing account to facilitate division service. The rules
78 shall require that the:

79 (a) division determine if the nature of the business and the volume of requests merit the
80 dissemination of the information by telephone;

81 (b) division determine if the credit rating of the requesting party justifies providing a
82 billing account; and

83 (c) requestor submit to the division an application that includes names and signatures
84 of persons authorized to request information by telephone and charge the fees to the billing
85 account.

86 (9) (a) The division shall charge a reasonable search fee determined under Section
87 63J-1-504 for the research of each record requested.

88 (b) Fees may not be charged for furnishing information to persons necessary for their
89 compliance with this chapter.

90 (c) Law enforcement agencies have access to division records free of charge.

91 (10) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
92 use, disclose, or disseminate a record created or maintained by the division or any information
93 contained in a record created or maintained by the division for a purpose prohibited or not
94 permitted by statute, rule, regulation, or policy of a governmental entity.

95 (b) A person who discovers or becomes aware of any unauthorized use of records
96 created or maintained by the division shall inform the director of the unauthorized use.

97 Section 2. Section **53-3-109** is amended to read:

98 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

99 (1) (a) Except as provided in this section, all records of the division shall be classified
100 and disclosed in accordance with Title 63G, Chapter 2, Government Records Access and
101 Management Act.

102 (b) The division may only disclose personal identifying information:

103 (i) when the division determines it is in the interest of the public safety to disclose the
104 information; and

105 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
106 Chapter 123.

107 (c) The division may disclose personal identifying information:

108 (i) to a licensed private investigator holding a valid agency license, with a legitimate
109 business need;

110 (ii) to an insurer, insurance support organization, or a self-insured entity, or its agents,
111 employees, or contractors that issues any motor vehicle insurance under Title 31A, Chapter 22,
112 Part 3, Motor Vehicle Insurance, for use in connection with claims investigation activities,
113 antifraud activities, rating, or underwriting for any person issued a license certificate under this

114 chapter; or

115 (iii) to a depository institution as defined in Section 7-1-103 for use in accordance with
116 the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

117 (2) (a) A person who receives personal identifying information shall be advised by the
118 division that the person may not:

119 (i) disclose the personal identifying information from that record to any other person;

120 or

121 (ii) use the personal identifying information from that record for advertising or
122 solicitation purposes.

123 (b) Any use of personal identifying information by an insurer or insurance support
124 organization, or by a self-insured entity or its agents, employees, or contractors not authorized
125 by Subsection (1)(c)(ii) is:

126 (i) an unfair marketing practice under Section 31A-23a-402; or

127 (ii) an unfair claim settlement practice under Subsection 31A-26-303(3).

128 (3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee
129 may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer
130 as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing
131 driving risk on the insurer's current motor vehicle insurance policyholders.

132 (b) The disclosure under Subsection (3)(a) shall:

133 (i) include the licensed driver's name, driver license number, date of birth, and an
134 indication of whether the driver has had a moving traffic violation that is a reportable violation,
135 as defined under Section 53-3-102 during the previous month;

136 (ii) be limited to the records of drivers who, at the time of the disclosure, are covered
137 under a motor vehicle insurance policy of the insurer; and

138 (iii) be made under a contract with the insurer or a designee of an insurer.

139 (c) The contract under Subsection (3)(b)(iii) shall specify:

140 (i) the criteria for searching and compiling the driving records being requested;

141 (ii) the frequency of the disclosures;

- 142 (iii) the format of the disclosures, which may be in bulk electronic form; and
- 143 (iv) a reasonable charge for the driving record disclosures under this Subsection (3).
- 144 (4) The division may:
 - 145 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its
 - 146 files or furnishing a report on the driving record of a person;
 - 147 (b) prepare under the seal of the division and deliver upon request, a certified copy of
 - 148 any record of the division, and charge a fee under Section 63J-1-504 for each document
 - 149 authenticated; and
 - 150 (c) charge reasonable fees established in accordance with the procedures and
 - 151 requirements of Section 63J-1-504 for disclosing personal identifying information under
 - 152 Subsection (1)(c).
 - 153 (5) Each certified copy of a driving record furnished in accordance with this section is
 - 154 admissible in any court proceeding in the same manner as the original.
 - 155 (6) (a) A driving record furnished under this section may only report on the driving
 - 156 record of a person for a period of 10 years.
 - 157 (b) Subsection (6)(a) does not apply to court or law enforcement reports and to reports
 - 158 of commercial driver license violations.
 - 159 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 - 160 division may make rules to designate:
 - 161 (a) what information shall be included in a report on the driving record of a person;
 - 162 (b) the form of a report or copy of the report which may include electronic format;
 - 163 (c) the form of a certified copy, as required under Section 53-3-216, which may include
 - 164 electronic format;
 - 165 (d) the form of a signature required under this chapter which may include electronic
 - 166 format;
 - 167 (e) the form of written request to the division required under this chapter which may
 - 168 include electronic format;
 - 169 (f) the procedures, requirements, and formats for disclosing personal identifying

170 information under Subsection (1)(c); and

171 (g) the procedures, requirements, and formats necessary for the implementation of
172 Subsection (3).

173 (8) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
174 use, disclose, or disseminate a record created or maintained by the division or any information
175 contained in a record created or maintained by the division for a purpose prohibited or not
176 permitted by statute, rule, regulation, or policy of a governmental entity.

177 (b) A person who discovers or becomes aware of any unauthorized use of records
178 created or maintained by the division shall inform the commissioner and the division director
179 of the unauthorized use.

180 Section 3. Section **53-10-108** is amended to read:

181 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
182 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
183 **-- Missing children records -- Penalty for misuse of records.**

184 (1) Dissemination of information from a criminal history record or warrant of arrest
185 information from division files is limited to:

186 (a) criminal justice agencies for purposes of administration of criminal justice and for
187 employment screening by criminal justice agencies;

188 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
189 executive order, court rule, court order, or local ordinance;

190 (c) agencies or individuals for the purpose of obtaining required clearances connected
191 with foreign travel or obtaining citizenship;

192 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
193 agency to provide services required for the administration of criminal justice; and

194 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
195 purposes for which given, and ensure the security and confidentiality of the data;

196 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
197 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

198 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
199 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
200 agency; and

201 (ii) private security agencies through guidelines established by the commissioner for
202 employment background checks for their own employees and prospective employees;

203 (g) a qualifying entity for employment background checks for their own employees and
204 persons who have applied for employment with the qualifying entity; and

205 (h) other agencies and individuals as the commissioner authorizes and finds necessary
206 for protection of life and property and for offender identification, apprehension, and
207 prosecution pursuant to an agreement.

208 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access
209 to data, limit the use of data to research, evaluative, or statistical purposes, preserve the
210 anonymity of individuals to whom the information relates, and ensure the confidentiality and
211 security of the data.

212 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
213 obtain a signed waiver from the person whose information is requested.

214 (b) The waiver must notify the signee:

215 (i) that a criminal history background check will be conducted;

216 (ii) who will see the information; and

217 (iii) how the information will be used.

218 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:

219 (i) available to persons involved in the hiring or background investigation of the
220 employee; and

221 (ii) used for the purpose of assisting in making an employment or promotion decision.

222 (d) A person who disseminates or uses information obtained from the division under
223 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
224 any penalties provided under this section, is subject to civil liability.

225 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide

226 the employee or employment applicant an opportunity to:

227 (i) review the information received as provided under Subsection (8); and

228 (ii) respond to any information received.

229 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
230 division may make rules to implement this Subsection (3).

231 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.

232 (ii) The name check fee under Subsection (1)(g) is \$15.

233 (iii) These fees remain in effect until changed by the division through the process under
234 Section 63J-1-504.

235 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
236 deposited in the General Fund as a dedicated credit by the department to cover the costs
237 incurred in providing the information.

238 (h) The division or its employees are not liable for defamation, invasion of privacy,
239 negligence, or any other claim in connection with the contents of information disseminated
240 under Subsection (1)(g).

241 (4) (a) Any criminal history record information obtained from division files may be
242 used only for the purposes for which it was provided and may not be further disseminated,
243 except under Subsection (4)(b).

244 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
245 provided by the agency to the person who is the subject of the history, another licensed
246 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
247 adoption.

248 (5) If an individual has no prior criminal convictions, criminal history record
249 information contained in the division's computerized criminal history files may not include
250 arrest or disposition data concerning an individual who has been acquitted, the person's charges
251 dismissed, or when no complaint against the person has been filed.

252 (6) (a) This section does not preclude the use of the division's central computing
253 facilities for the storage and retrieval of criminal history record information.

254 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
255 unauthorized agencies or individuals.

256 (7) Direct access through remote computer terminals to criminal history record
257 information in the division's files is limited to those agencies authorized by the commissioner
258 under procedures designed to prevent unauthorized access to this information.

259 (8) (a) The commissioner shall establish procedures to allow an individual right of
260 access to review and receive a copy of the individual's criminal history report.

261 (b) A processing fee for the right of access service, including obtaining a copy of the
262 individual's criminal history report under Subsection (8)(a) is \$15. This fee remains in effect
263 until changed by the commissioner through the process under Section 63J-1-504.

264 (c) (i) The commissioner shall establish procedures for an individual to challenge the
265 completeness and accuracy of criminal history record information contained in the division's
266 computerized criminal history files regarding that individual.

267 (ii) These procedures shall include provisions for amending any information found to
268 be inaccurate or incomplete.

269 (9) The private security agencies as provided in Subsection (1)(f)(ii):

270 (a) shall be charged for access; and

271 (b) shall be registered with the division according to rules made by the division under
272 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

273 (10) Before providing information requested under this section, the division shall give
274 priority to criminal justice agencies needs.

275 ~~[(11) (a) Misuse of access to criminal history record information is a class B~~
276 ~~misdemeanor.]~~

277 ~~[(b) The commissioner shall be informed of the misuse.]~~

278 (11) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
279 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
280 division or any information contained in a record created, maintained, or to which access is
281 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or

282 policy of a governmental entity.

283 (b) A person who discovers or becomes aware of any unauthorized use of records
284 created or maintained, or to which access is granted by the division shall inform the
285 commissioner and the director of the Utah Bureau of Criminal Identification of the
286 unauthorized use.

287 Section 4. Section **53-10-111** is amended to read:

288 **53-10-111. Refusal to provide information -- False information -- Misdemeanor.**

289 It is a class B misdemeanor for a person to:

- 290 (1) neglect or refuse to provide, or willfully withhold any information under this part;
 - 291 (2) willfully provide false information;
 - 292 (3) willfully fail to do or perform any act required under this part;
 - 293 (4) hinder or prevent another from doing an act required under this part; or
 - 294 (5) willfully remove, destroy, alter, mutilate, or disclose the contents of any file or
- 295 record ~~[of]~~ created or maintained, or to which access is granted by the division unless
296 authorized by and in compliance with procedures established by the ~~[commissioner]~~ division.