

**PENALTIES FOR UNAUTHORIZED USE OF RECORDS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Richard A. Greenwood**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**Committee Note:**

The Transportation Interim Committee recommended this bill.

**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 unauthorized use 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:



- 28           **41-1a-116**, as last amended by Laws of Utah 2009, Chapter 183
- 29           **53-3-109**, as last amended by Laws of Utah 2009, Chapter 183
- 30           **53-10-108**, as last amended by Laws of Utah 2010, Chapter 58
- 31           **53-10-111**, as renumbered and amended by Laws of Utah 1998, Chapter 263

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

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

35           **41-1a-116. Records -- Access to records -- Fees.**

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

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

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

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

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

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

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

55           (b) use information from that record for advertising or solicitation purposes.

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

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

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

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

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

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

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

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

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

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

83 (9) (a) The division shall charge a reasonable search fee determined under Section  
84 63J-1-504 for the research of each record requested.

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

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

88 (10) (a) Unauthorized use of records created or maintained by the division is a class B  
89 misdemeanor.

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

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

93 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

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

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

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

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

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

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

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

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

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

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

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

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

- 121 (i) an unfair marketing practice under Section 31A-23a-402; or  
122 (ii) an unfair claim settlement practice under Subsection 31A-26-303(3).
- 123 (3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee  
124 may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer  
125 as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing  
126 driving risk on the insurer's current motor vehicle insurance policyholders.
- 127 (b) The disclosure under Subsection (3)(a) shall:
- 128 (i) include the licensed driver's name, driver license number, date of birth, and an  
129 indication of whether the driver has had a moving traffic violation that is a reportable violation,  
130 as defined under Section 53-3-102 during the previous month;
- 131 (ii) be limited to the records of drivers who, at the time of the disclosure, are covered  
132 under a motor vehicle insurance policy of the insurer; and
- 133 (iii) be made under a contract with the insurer or a designee of an insurer.
- 134 (c) The contract under Subsection (3)(b)(iii) shall specify:
- 135 (i) the criteria for searching and compiling the driving records being requested;  
136 (ii) the frequency of the disclosures;  
137 (iii) the format of the disclosures, which may be in bulk electronic form; and  
138 (iv) a reasonable charge for the driving record disclosures under this Subsection (3).
- 139 (4) The division may:
- 140 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its  
141 files or furnishing a report on the driving record of a person;
- 142 (b) prepare under the seal of the division and deliver upon request, a certified copy of  
143 any record of the division, and charge a fee under Section 63J-1-504 for each document  
144 authenticated; and
- 145 (c) charge reasonable fees established in accordance with the procedures and  
146 requirements of Section 63J-1-504 for disclosing personal identifying information under  
147 Subsection (1)(c).
- 148 (5) Each certified copy of a driving record furnished in accordance with this section is  
149 admissible in any court proceeding in the same manner as the original.
- 150 (6) (a) A driving record furnished under this section may only report on the driving  
151 record of a person for a period of 10 years.

152 (b) Subsection (6)(a) does not apply to court or law enforcement reports and to reports  
153 of commercial driver license violations.

154 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
155 division may make rules to designate:

156 (a) what information shall be included in a report on the driving record of a person;

157 (b) the form of a report or copy of the report which may include electronic format;

158 (c) the form of a certified copy, as required under Section 53-3-216, which may include  
159 electronic format;

160 (d) the form of a signature required under this chapter which may include electronic  
161 format;

162 (e) the form of written request to the division required under this chapter which may  
163 include electronic format;

164 (f) the procedures, requirements, and formats for disclosing personal identifying  
165 information under Subsection (1)(c); and

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

168 (8) (a) Unauthorized use of records created or maintained by the division is a class B  
169 misdemeanor.

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

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

174 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**  
175 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**  
176 **-- Missing children records.**

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

179 (a) criminal justice agencies for purposes of administration of criminal justice and for  
180 employment screening by criminal justice agencies;

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

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

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

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

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

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

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

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

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

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

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

207 (b) The waiver must notify the signee:

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

209 (ii) who will see the information; and

210 (iii) how the information will be used.

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

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

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

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

218 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide  
219 the employee or employment applicant an opportunity to:

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

221 (ii) respond to any information received.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

263 (a) shall be charged for access; and

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

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

268 (11) (a) ~~[Misuse of access to criminal history record information]~~ Unauthorized use of  
269 records created or maintained, or to which access is granted by the division is a class B  
270 misdemeanor.

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

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

276 Section 4. Section **53-10-111** is amended to read:  
277 **53-10-111. Refusal to provide information -- False information -- Misdemeanor.**  
278 It is a class B misdemeanor for a person to:  
279 (1) neglect or refuse to provide, or willfully withhold any information under this part;  
280 (2) willfully provide false information;  
281 (3) willfully fail to do or perform any act required under this part;  
282 (4) hinder or prevent another from doing an act required under this part; or  
283 (5) willfully remove, destroy, alter, mutilate, or disclose the contents of any file or  
284 record ~~[of]~~ created or maintained, or to which access is granted by the division unless  
285 authorized by and in compliance with procedures established by the ~~[commissioner]~~ division.

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**Legislative Review Note**  
**as of 11-17-10 2:25 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 28, 2011 General Session

SHORT TITLE: Penalties for Unauthorized Use of Records

SPONSOR: Greenwood, R.

STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

It is estimated that an offender would be fined \$500 in a Justice Court; of which \$250 would go to the state and \$250 would go to the county. It is estimated that there would be one case per year.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Restricted Funds	\$0	\$250	\$250
Total Revenue	\$0	\$250	\$250
Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$250	\$250
Net Impact, General/Education Funds	\$0	\$0	\$0

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

It is estimated that an offender would be fined \$500 in a Justice Court; of which \$250 would go to the state and \$250 would go to the county. It is estimated that there would be one case per year.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.