

HB0028S01 compared with HB0028

~~{deleted text}~~ shows text that was in HB0028 but was deleted in HB0028S01.

inserted text shows text that was not in HB0028 but was inserted into HB0028S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator Curtis S. Bramble proposes the following substitute bill:

PENALTIES FOR UNAUTHORIZED USE OF RECORDS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: ~~{~~ Curtis S. Bramble }

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 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

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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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) In addition to those persons granted access to protected records under Section

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63G-2-202, the division ~~may~~ shall disclose a protected record to a licensed private investigator, holding a valid agency or registrant license, with a legitimate business need, a person with a bona fide security interest, or the owner of a mobile home park subject to Subsection (5), only upon receipt of a signed acknowledgment that the person receiving that protected record may not:

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

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

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

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

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

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

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

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

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

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

(a) division determine if the nature of the business and the volume of requests merit the

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dissemination of the information by telephone;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The division may disclose personal identifying information:

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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- (ii) the frequency of the disclosures;
- (iii) the format of the disclosures, which may be in bulk electronic form; and
- (iv) a reasonable charge for the driving record disclosures under this Subsection (3).

(4) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person;

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63J-1-504 for each document authenticated; and

(c) charge reasonable fees established in accordance with the procedures and requirements of Section 63J-1-504 for disclosing personal identifying information under Subsection (1)(c).

(5) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(6) (a) A driving record furnished under this section may only report on the driving record of a person for a period of 10 years.

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

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

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

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

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

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

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

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

(g) the procedures, requirements, and formats necessary for the implementation of

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Subsection (3).

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

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

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

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

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

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

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

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

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

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

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

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

(ii) private security agencies through guidelines established by the commissioner for

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employment background checks for their own employees and prospective employees;

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

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

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

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

(b) The waiver must notify the signee:

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

(ii) who will see the information; and

(iii) how the information will be used.

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

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

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

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

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

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

(ii) respond to any information received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) shall be charged for access; and

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

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

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

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

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

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

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

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

It is a class B misdemeanor for a person to:

- (1) neglect or refuse to provide, or willfully withhold any information under this part;
- (2) willfully provide false information;
- (3) willfully fail to do or perform any act required under this part;
- (4) hinder or prevent another from doing an act required under this part; or

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(5) willfully remove, destroy, alter, mutilate, or disclose the contents of any file or record [of] created or maintained, or to which access is granted by the division unless 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}