

1 **DRIVER LICENSE REPORTING**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Millie M. Peterson**

5 **This act modifies the Public Safety Code relating to the reporting process for impaired**
6 **drivers. This act provides anonymity for reports and provides penalties for false reports.**

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **53-3-303**, as last amended by Chapter 85, Laws of Utah 2001

10 **58-1-501**, as last amended by Chapter 148, Laws of Utah 2001

11 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

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

13 Section 1. Section **53-3-303** is amended to read:

14 **53-3-303. Driver License Medical Advisory Board -- Membership -- Guidelines for**
15 **licensing impaired persons -- Recommendations to division.**

16 (1) There is created within the division the Driver License Medical Advisory Board.

17 (2) (a) The board is comprised of three regular members appointed by the Commissioner
18 of Public Safety to four-year terms.

19 (b) The board shall be assisted by expert panel members nominated by the board as
20 necessary and as approved by the Commissioner of Public Safety.

21 (c) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at
22 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
23 board members are staggered so that approximately half of the board is appointed every two years.

24 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
25 appointed for the unexpired term.

26 (e) The expert panel members shall recommend medical standards in the areas of the panel
27 members' special competence for determining the physical[;] and mental[; ~~and emotional~~]



28 capabilities of applicants for licenses and licensees.

29 (3) In reviewing individual cases, a panel acting with the authority of the board consists
30 of at least two members, of which at least one is a regular board member.

31 (4) The director of the division or his designee serves as secretary to the board and its
32 panels.

33 (5) Members of the board and expert panel members nominated by them shall be health
34 care professionals.

35 (6) (a) (i) Members who are not government employees shall receive no compensation
36 or benefits for their services, but may receive per diem and expenses incurred in the performance
37 of the member’s official duties at the rates established by the Division of Finance under Sections
38 63A-3-106 and 63A-3-107.

39 (ii) Members may decline to receive per diem and expenses for their service.

40 (b) (i) State government officer and employee members who do not receive salary, per
41 diem, or expenses from their agency for their service may receive per diem and expenses incurred
42 in the performance of their official duties from the board at the rates established by the Division
43 of Finance under Sections 63A-3-106 and 63A-3-107.

44 (ii) State government officer and employee members may decline to receive per diem and
45 expenses for their service.

46 (7) The board shall meet from time to time when called by the director of the division.

47 (8) (a) The board shall recommend guidelines and standards for determining the physical[;]
48 and mental[; ~~and emotional~~] capabilities of applicants for licenses and for licensees.

49 (b) The guidelines and standards are applicable to all Utah licensees and for all individuals
50 who hold learner permits and are participating in driving activities in all forms of driver education.

51 (c) The guidelines and standards shall be published by the division.

52 (9) (a) If the division has reason to believe that an applicant or licensee is an impaired
53 person, it may:

54 [~~(a)~~] (i) act upon the matter based upon the published guidelines and standards; or

55 [~~(b)~~] (ii) convene a panel to consider the matter and submit findings and a

56 recommendation[; ~~the~~] in a manner prescribed by the division.

57 (b) The division shall consider the recommendation submitted under Subsection (9)(a)(ii)
58 along with other evidence in determining whether a license should be suspended, revoked, denied,

59 disqualified, canceled, or restricted.

60 (10) (a) If the division has acted under Subsection (9) to suspend, revoke, deny, disqualify,
61 cancel, or restrict the driving privilege without the convening of a panel, the affected applicant or
62 licensee may within ten days of receiving notice of the action request in a manner prescribed by
63 the division a review of the division's action by a panel.

64 (b) The panel shall review the matters and make ~~[written]~~ findings and conclusions in a
65 manner prescribed by the division.

66 (c) The division shall affirm or modify its previous action.

67 (11) (a) Actions of the division are subject to judicial review as provided in this part.

68 (b) The guidelines, standards, findings, conclusions, and recommendations of the board
69 or of a panel are admissible as evidence in any judicial review.

70 (12) Members of the board and its panels incur no liability for recommendations, findings,
71 conclusions, or for other acts performed in good faith and incidental to membership on the board
72 or a panel.

73 (13) The division shall provide forms for the use of health care professionals in depicting
74 the medical history of any physical[;] and mental[; ~~or emotional~~] impairment affecting the
75 applicant's or licensee's ability to drive a motor vehicle.

76 **§ ~~[(14)(a)(i) [Individuals] A person who [apply] applies for or [hold] holds a license and~~**
77 **~~[have, or develop, or suspect that they have] who has, develops, or suspects that he has developed~~**
78 **~~a continuing or permanent physical[;] or mental[; ~~or emotional~~] impairment that may affect driving~~**
79 **~~safety [are] is responsible for reporting [this] the condition to the division or its agent.~~**

80 **~~——(ii) If there is uncertainty, the [individual is expected to] person shall seek competent~~**
81 **~~medical evaluation and advice as to the significance of the impairment as it relates to driving~~**
82 **~~safety, and [to] shall refrain from driving until a clarification is made.] §~~**

83 (b) [Health] A health care [professionals] professional, subject to Title 58, Occupations
84 and Professions, who [care] cares for [patients] a patient with a known continuing or permanent
85 physical[;] or mental[; ~~or emotional~~] impairments that may affect their] impairment that presents
86 a threat to driving safety, whether defined by published guidelines and standards or not, [are] is
87 responsible for making available to [their patients] the patient without reservation [their] the health
88 care professional's recommendations and other appropriate information related to driving safety
89 and responsibilities.

90 ~~[(e)]~~ (15) (a) A health care professional or other person ~~[who becomes aware]~~ may make
91 a report to the division:

92 (i) of a continuing or permanent physical[;] or mental[~~,-or emotional~~] impairment that
93 [appears to present an imminent] presents a threat to driving safety [and reports this information
94 to the division in good faith has immunity from any damages claimed as a result of making the
95 report.];

96 (ii) that is based upon physical evidence, the personal observations or professional
97 judgment of the reporting person, or a police investigation; and

98 (iii) on a division form that provides notice of the penalty for a false report and that is
99 signed by the reporting person.

100 (b) A person who makes a report under this Subsection (15) in good faith shall have:

101 (i) immunity from any damages claimed as a result of making the report; and

102 (ii) anonymity protected by the division and the board.

103 (c) A report filed with the division under this Subsection (15) shall be a protected record
104 as provided in Title 63, Chapter 2, Government Records Access and Management Act.

105 (d) (i) A false or inaccurate report made by a health care professional for an improper
106 purpose under this Subsection (15) constitutes unprofessional conduct under Section 58-1-501.

107 (ii) A person other than a health care professional who makes a false or inaccurate report
108 for an improper purpose under this Subsection (15) is guilty of a class B misdemeanor.

109 Section 2. Section **58-1-501** is amended to read:

110 **58-1-501. Unlawful and unprofessional conduct.**

111 (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under
112 this title and includes:

113 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
114 attempting to practice or engage in any occupation or profession requiring licensure under this title
115 if the person is:

116 (i) not licensed to do so or not exempted from licensure under this title; or

117 (ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary,
118 or inactive license;

119 (b) impersonating another licensee or practicing an occupation or profession under a false
120 or assumed name, except as permitted by law;

121 (c) knowingly employing any other person to practice or engage in or attempt to practice
122 or engage in any occupation or profession licensed under this title if the employee is not licensed
123 to do so under this title;

124 (d) knowingly permitting the person's authority to practice or engage in any occupation or
125 profession licensed under this title to be used by another, except as permitted by law; or

126 (e) obtaining a passing score on a licensure examination, applying for or obtaining a
127 license, or otherwise dealing with the division or a licensing board through the use of fraud,
128 forgery, or intentional deception, misrepresentation, misstatement, or omission.

129 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as
130 unprofessional conduct under this title or under any rule adopted under this title and includes:

131 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
132 regulating an occupation or profession under this title;

133 (b) violating, or aiding or abetting any other person to violate, any generally accepted
134 professional or ethical standard applicable to an occupation or profession regulated under this title;

135 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of
136 guilty or nolo contendere which is held in abeyance pending the successful completion of
137 probation with respect to a crime of moral turpitude or any other crime that, when considered with
138 the functions and duties of the occupation or profession for which the license was issued or is to
139 be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or
140 competently practice the occupation or profession;

141 (d) engaging in conduct that results in disciplinary action, including reprimand, censure,
142 diversion, probation, suspension, or revocation, by any other licensing or regulatory authority
143 having jurisdiction over the licensee or applicant in the same occupation or profession if the
144 conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings
145 under Section 58-1-401;

146 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
147 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
148 ability of the licensee or applicant to safely engage in the occupation or profession;

149 (f) practicing or attempting to practice an occupation or profession regulated under this
150 title despite being physically or mentally unfit to do so;

151 (g) practicing or attempting to practice an occupation or profession regulated under this

152 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

153 (h) practicing or attempting to practice an occupation or profession requiring licensure
154 under this title by any form of action or communication which is false, misleading, deceptive, or
155 fraudulent;

156 (i) practicing or attempting to practice an occupation or profession regulated under this
157 title beyond the scope of the licensee's competency, abilities, or education;

158 (j) practicing or attempting to practice an occupation or profession regulated under this
159 title beyond the scope of the licensee's license;

160 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
161 conduct connected with the licensee's practice under this title or otherwise facilitated by the
162 licensee's license; [or]

163 (l) acting as a supervisor without meeting the qualification requirements for that position
164 that are defined by statute or rule[-]; or

165 (m) a health care professional submitting a false or inaccurate report for an improper
166 purpose to the Driver License Division under Subsection 53-3-303(15).

167 Section 3. Section **63-2-304** is amended to read:

168 **63-2-304. Protected records.**

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

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

172 (2) commercial information or nonindividual financial information obtained from a person
173 if:

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

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

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

181 (3) commercial or financial information acquired or prepared by a governmental entity to
182 the extent that disclosure would lead to financial speculations in currencies, securities, or

183 commodities that will interfere with a planned transaction by the governmental entity or cause
184 substantial financial injury to the governmental entity or state economy;

185 (4) records the disclosure of which could cause commercial injury to, or confer a
186 competitive advantage upon a potential or actual competitor of, a commercial project entity as
187 defined in Subsection 11-13-3(3);

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

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

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

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

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

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

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

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

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

212 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
213 value of the subject property have already been disclosed to persons not employed by or under a

214 duty of confidentiality to the entity;

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

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

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

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

223 (d) reasonably could be expected to disclose the identity of a source who is not generally
224 known outside of government and, in the case of a record compiled in the course of an
225 investigation, disclose information furnished by a source not generally known outside of
226 government if disclosure would compromise the source; or

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

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

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

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

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

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

244 (15) records of a governmental audit agency relating to an ongoing or planned audit until

245 the final audit is released;

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

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

250 (18) records of communications between a governmental entity and an attorney
251 representing, retained, or employed by the governmental entity if the communications would be
252 privileged as provided in Section 78-24-8;

253 (19) personal files of a legislator, including personal correspondence to or from a member
254 of the Legislature, but not correspondence that gives notice of legislative action or policy;

255 (20) (a) records in the custody or control of the Office of Legislative Research and General
256 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
257 contemplated course of action before the legislator has elected to support the legislation or course
258 of action, or made the legislation or course of action public; and

259 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
260 Legislative Research and General Counsel is a public document unless a legislator submits the
261 "Request For Legislation" with a request that it be maintained as a protected record until such time
262 as the legislator elects to make the legislation or course of action public;

263 (21) research requests from legislators to the Office of Legislative Research and General
264 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
265 to these requests;

266 (22) drafts, unless otherwise classified as public;

267 (23) records concerning a governmental entity's strategy about collective bargaining or
268 pending litigation;

269 (24) records of investigations of loss occurrences and analyses of loss occurrences that
270 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
271 Employers' Fund, or similar divisions in other governmental entities;

272 (25) records, other than personnel evaluations, that contain a personal recommendation
273 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
274 privacy, or disclosure is not in the public interest;

275 (26) records that reveal the location of historic, prehistoric, paleontological, or biological

276 resources that if known would jeopardize the security of those resources or of valuable historic,
277 scientific, educational, or cultural information;

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

280 (28) records of a public institution of higher education regarding tenure evaluations,
281 appointments, applications for admissions, retention decisions, and promotions, which could be
282 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
283 Meetings, provided that records of the final decisions about tenure, appointments, retention,
284 promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

296 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
297 except as provided in Section 52-4-7;

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

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

303 (35) records that would reveal negotiations regarding assistance or incentives offered by
304 or requested from a governmental entity for the purpose of encouraging a person to expand or
305 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
306 or place the governmental entity at a competitive disadvantage, but this section may not be used

307 to restrict access to a record evidencing a final contract;

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

311 (37) the name of a donor or a prospective donor to a governmental entity, including a
312 public institution of higher education, and other information concerning the donation that could
313 reasonably be expected to reveal the identity of the donor, provided that:

314 (a) the donor requests anonymity in writing;

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

317 (c) except for public institutions of higher education, the governmental unit to which the
318 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
319 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
320 owned or controlled by the donor or his immediate family;

321 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

322 (39) a notification of workers' compensation insurance coverage described in Section
323 34A-2-205; ~~and~~

324 (40) a report of an impaired driver made to the Driver License Division under Subsection
325 53-3-303(15); and

326 ~~[(40)]~~ (41) the following records of a public institution of education, which have been
327 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the
328 institution: unpublished lecture notes, unpublished research notes and data, unpublished
329 manuscripts, creative works in process, scholarly correspondence, and confidential information
330 contained in research proposals. Nothing in this Subsection (40) shall be construed to affect the
331 ownership of a record.

Legislative Review Note
as of 11-14-01 5:40 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Transportation Interim Committee recommended this bill.