

1 **LEGISLATIVE ACCESS TO CERTAIN**
2 **INFORMATION**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

6 **This act amends provisions in the Revenue and Taxation Code and Judicial Code to allow**
7 **for audit by the Office of Legislative Auditor General.**

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

9 AMENDS:

10 **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002

11 **78-8-107**, as last amended by Chapter 331, Laws of Utah 2002

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

13 Section 1. Section **59-1-403** is amended to read:

14 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

15 (1) (a) Except as provided in this section, any of the following may not divulge or make
16 known in any manner any information gained by that person from any return filed with the
17 commission:

18 (i) a tax commissioner;

19 (ii) an agent, clerk, or other officer or employee of the commission; or

20 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
21 town.

22 (b) Except as provided in Subsection (1)(c) and (1)(d), an official charged with the
23 custody of a return filed with the commission is not required to produce the return or evidence
24 of anything contained in the return in any action or proceeding in any court, except:

25 (i) in accordance with judicial order;

26 (ii) on behalf of the commission in any action or proceeding under:

27 (A) this title; or



28 (B) other law under which persons are required to file returns with the commission;
29 (iii) on behalf of the commission in any action or proceeding to which the commission
30 is a party; or

31 (iv) on behalf of any party to any action or proceeding under this title if the report or
32 facts shown by the return are directly involved in the action or proceeding.

33 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
34 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
35 pertinent to the action or proceeding.

36 (d) Notwithstanding Subsection (1)(b), a return, return information, and any other tax
37 information in the possession of the commission may be open to inspection by, disclosure to,
38 or copying by the Office of Legislative Auditor General for the purpose of an audit.

39 (2) This section does not prohibit:

40 (a) a person or that person's duly authorized representative from receiving a copy of
41 any return or report filed in connection with that person's own tax;

42 (b) the publication of statistics as long as the statistics are classified to prevent the
43 identification of particular reports or returns; and

44 (c) the inspection by the attorney general or other legal representative of the state of the
45 report or return of any taxpayer:

46 (i) who brings action to set aside or review a tax based on the report or return;

47 (ii) against whom an action or proceeding is contemplated or has been instituted under
48 this title; or

49 (iii) against whom the state has an unsatisfied money judgment.

50 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
51 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
52 Rulemaking Act, provide for a reciprocal exchange of information with:

53 (i) the United States Internal Revenue Service; or

54 (ii) the revenue service of any other state.

55 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
56 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
57 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
58 and other written statements with the federal government, any other state, any of the political

59 subdivisions of another state, or any political subdivision of this state, except as limited by
60 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
61 grant substantially similar privileges to this state.

62 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
63 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
64 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
65 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
66 due.

67 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
68 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
69 requested by the executive secretary, any records, returns, or other information filed with the
70 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
71 regarding the environmental assurance program participation fee.

72 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
73 provide that person sales and purchase volume data reported to the commission on a report,
74 return, or other information filed with the commission under:

- 75 (i) Chapter 13, Part 2, Motor Fuel; or
- 76 (ii) Chapter 13, Part 4, Aviation Fuel.

77 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
78 as defined in Section 59-22-202, the commission shall report to the manufacturer:

79 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
80 manufacturer and reported to the commission for the previous calendar year under Section
81 59-14-407; and

82 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
83 manufacturer for which a tax refund was granted during the previous calendar year under
84 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

85 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
86 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
87 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

88 (h) Notwithstanding Subsection (1), the commission may:

89 (i) provide to the Division of Consumer Protection within the Department of

90 Commerce and the attorney general data:

91 (A) reported to the commission under Section 59-14-212; or

92 (B) related to a violation under Section 59-14-211; and

93 (ii) upon request provide to any person data reported to the commission under

94 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

95 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
96 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
97 and Budget, provide to the committee or office the total amount of revenues collected by the
98 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the
99 committee or office.

100 (j) Notwithstanding Subsection (1), the commission shall at the request of the
101 Legislature provide to the Legislature the total amount of sales or uses exempt under
102 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

103 (k) Notwithstanding Subsection (1), the commission shall make the list required by
104 Subsection 59-14-408(3) available for public inspection.

105 (4) (a) Reports and returns shall be preserved for at least three years.

106 (b) After the three-year period provided in Subsection (4)(a) the commission may
107 destroy a report or return.

108 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

109 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
110 the person shall be dismissed from office and be disqualified from holding public office in this
111 state for a period of five years thereafter.

112 (6) This part does not apply to the property tax.

113 Section 2. Section **78-8-107** is amended to read:

114 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
115 **misconduct or information -- Procedure for reprimand, censure, removal, suspension, or**
116 **involuntary retirement -- Certain orders made public.**

117 (1) (a) The commission shall receive and investigate any complaint against a judge.

118 (b) (i) If the commission receives a complaint that alleges conduct that may be a
119 misdemeanor or felony under state or federal law, it shall, unless the allegation is plainly
120 frivolous, immediately refer the allegation of criminal misconduct and any information

121 relevant to the potential criminal violation to the local prosecuting attorney having jurisdiction
122 to investigate and prosecute the crime.

123 (ii) If the local prosecuting attorney receiving the allegation of criminal misconduct of
124 a judge practices before that judge on a regular basis, or has a conflict of interest in
125 investigating the crime, the local prosecuting attorney shall refer this allegation of criminal
126 misconduct to another local or state prosecutor who would not have that same disability or
127 conflict.

128 (iii) The commission may concurrently proceed with its investigation of the complaint
129 without waiting for the resolution of the criminal investigation by the prosecuting attorney.

130 (2) During the course of any investigation, the commission:

131 (a) shall refer any information relating to the criminal conduct alleged and any
132 evidence which relates to the allegation to which the judge has been accused, unless plainly
133 frivolous, to the local prosecuting attorney as provided in Subsection (1)(b);

134 (b) may order a hearing to be held concerning the reprimand, censure, suspension,
135 removal, or involuntary retirement of a judge;

136 (c) may, with the written consent of the judge being investigated, resolve a complaint
137 by issuing an informal order of reprimand which shall be disclosed to:

138 (i) the person who filed the complaint;

139 (ii) the judge who is the subject of the complaint;

140 (iii) the Judicial Council for its use in the judicial recertification process;

141 (iv) the Supreme Court for issuance of its final order as provided in Subsection (7); and

142 (v) the person who appointed the municipal justice court judge; and

143 (d) may, with the written consent of the judge receiving the informal order of
144 reprimand under Subsection (2)(c), publicly disclose the commission's informal order of
145 reprimand.

146 (3) The commission shall provide the judge with all information necessary to prepare
147 an adequate response or defense, which may include the identity of the complainant.

148 (4) (a) A hearing may be conducted before a quorum of the commission.

149 (b) Any finding or order shall be made upon a majority vote of the quorum.

150 (5) Alternatively, the commission may appoint three special masters, who are judges of
151 courts of record, to hear and take evidence in the matter and to report to the commission.

152 (6) (a) After the hearing or after considering the record and report of the masters, if the
153 commission finds by a preponderance of the evidence that misconduct occurred, it shall order
154 the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

155 (b) When a commission order is sent to the Supreme Court, it shall also be:

156 (i) publicly disclosed; and

157 (ii) sent to the person or entity who appointed the judge.

158 (c) Subsection (6)(b)(i) does not apply to a commission informal order of reprimand.

159 (7) When the commission issues any order, including a stipulated order, that is sent to
160 the Supreme Court, the record shall include:

161 (a) the original complaint and any other information regarding violations, or potential
162 violations, of the Code of Judicial Conduct;

163 (b) the notice of charges;

164 (c) all correspondence and other documents which passed between the commission and
165 the judge;

166 (d) all letters which may explain the charges;

167 (e) all affidavits, subpoenas, and testimony of witnesses;

168 (f) the commission's findings of fact and conclusions of law;

169 (g) a transcript of any proceedings, including hearings on motions;

170 (h) a transcript of the evidence;

171 (i) a summary of all the complaints dismissed by the commission against the judge

172 which contained allegations or information similar in nature to the misconduct under review by
173 the Supreme Court;

174 (j) a summary of all the orders implemented, rejected, or modified by the Supreme
175 Court against the judge; and

176 (k) all information in the commission's files on any informal resolution, including any
177 letter of admonition, comment, or caution, that the commission issued against the judge prior to
178 May 1, 2000.

179 (8) (a) Before the implementation, rejection, or modification of any commission order
180 issued under Subsections (2), (6), and (7) the Supreme Court shall:

181 (i) review the commission's proceedings as to both law and fact and may permit the
182 introduction of additional evidence; and

183 (ii) consider the number and nature of previous orders issued by the Supreme Court
184 and may increase the severity of the order based on a pattern or practice of misconduct or for
185 any other reason that the Supreme Court finds just and proper.

186 (b) In recommending any order, including stipulated orders, the commission may not
187 place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional
188 power to:

189 (i) review the commission's proceedings as to both law and fact; or

190 (ii) implement, reject, or modify a commission order.

191 (c) After briefs have been submitted and any oral argument made, the Supreme Court
192 shall, within 90 days, issue its order implementing, rejecting, or modifying the commission's
193 order[; and].

194 (9) (a) Upon an order for involuntary retirement, the judge shall retire with the same
195 rights and privileges as if the judge retired pursuant to statute.

196 (b) Upon an order for removal, the judge shall be removed from office and his salary or
197 compensation ceases from the date of the order.

198 (c) Upon an order for suspension from office, the judge may not perform any judicial
199 functions and may not receive a salary for the period of suspension.

200 (10) (a) The transmission, production, or disclosure of any complaints, papers, or
201 testimony in the course of proceedings before the commission, the masters appointed under
202 Subsection (5), or the Supreme Court may not be introduced in any civil action.

203 (b) The transmission, production, or disclosure of any complaints, papers, or testimony
204 in the course of proceedings before the commission or the masters appointed under Subsection
205 (5) may be introduced in any criminal action, consistent with the Utah Rules of Evidence. This
206 information shall be shared with the prosecutor conducting a criminal investigation or
207 prosecution of a judge as provided in Subsections (1) and (2).

208 (c) Complaints, papers, testimony, or the record of the commission's confidential
209 hearing may not be disclosed by the commission, masters, or any court until the Supreme Court
210 has entered its final order in accordance with this section, except:

211 (i) upon order of the Supreme Court;

212 (ii) upon the request of the judge who is the subject of the complaint;

213 (iii) as provided in Subsection (10)(d); [or]

214 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and
215 (2)~~[-]; or~~

216 (v) this information is subject to audit by the Office of Legislative Auditor General,
217 and any records released to the Office of Legislative Auditor General shall be maintained as
218 confidential, except:

219 (A) for information that has already been made public; and

220 (B) the final written and oral audit report of the Legislative Auditor General may
221 present information about the Judicial Conduct Commission as long as it contains no specific
222 information that would easily identify a judge, witness, or complainant.

223 (d) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall
224 be disclosed without consent of the judge to the person who filed the complaint.

225 (11) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
226 Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

227 (12) A judge who is a member of the commission or the Supreme Court may not
228 participate in any proceedings involving the judge's own removal or retirement.

229 (13) Retirement for involuntary retirement as provided in this chapter shall be
230 processed through the Utah State Retirement Office, and the judge retiring shall meet the
231 requirements for retirement as specified in this chapter.

Legislative Review Note
as of 1-22-03 7:54 AM

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

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 01-23-03 10:12 AM

The Legislative Audit Subcommittee recommended this bill.

Fiscal Note
Bill Number SB0029

Legislative Access to Certain Information

28-Jan-03

1:10 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst