

1 **DISCLOSURE OF INFORMATION BY THE**
2 **DEPARTMENT OF WORKFORCE SERVICES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Paul A. Neuenschwander**

6 Senate Sponsor: Wayne L. Niederhauser

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Employment Security Act to address disclosure of information by
11 the Department of Workforce Services.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ authorizes the Unemployment Insurance Division to disclose information to the
15 Department of Commerce for certain purposes;
16 ▶ updates language related to industry codes or classifications; and
17 ▶ makes technical and conforming changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **35A-4-312**, as last amended by Laws of Utah 2005, Chapters 81 and 148

25 **72-1-208.5**, as last amended by Laws of Utah 2006, Chapter 353

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

28 Section 1. Section **35A-4-312** is amended to read:

29 **35A-4-312. Records.**

30 (1) (a) ~~[Each]~~ An employing unit shall keep true and accurate work records containing
31 any information the department may prescribe by rule.

32 (b) ~~[The records]~~ A record shall be open to inspection and subject to being copied by
33 the division or its authorized representatives at a reasonable time and as often as may be
34 necessary.

35 (c) ~~[The]~~ An employing unit shall make ~~[the records]~~ a record available in the state for
36 three years after the calendar year in which the services ~~[were]~~ are rendered.

37 (2) The division may require from an employing unit ~~[any]~~ a sworn or unsworn
38 ~~[reports]~~ report with respect to ~~[persons]~~ a person employed by ~~[it]~~ the employing unit that the
39 division considers necessary for the effective administration of this chapter.

40 (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106,
41 information obtained under this chapter or obtained from an individual may not be published or
42 open to public inspection in any manner revealing the employing unit's or individual's identity.

43 (4) (a) The information obtained by the division under this section may not be used in
44 court or admitted into evidence in an action or proceeding, except:

45 (i) in an action or proceeding arising out of this chapter;

46 (ii) if the Labor Commission enters into a written agreement with the division under
47 Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce [the
48 provisions of]:

49 (A) Title 34, Chapter 23, Employment of Minors[;];

50 (B) Title 34, Chapter 28, Payment of Wages[;];

51 (C) Title 34, Chapter 40, Utah Minimum Wage Act[;]; or

52 (D) Title 34A, Utah Labor Code[; provided the Labor Commission enters into a written
53 agreement with the division under Subsection (6)(b)]; or

54 (iii) under the terms of a court order obtained under Subsection 63-2-202(7) and
55 Section 63-2-207 ~~[of the Government Records Access and Management Act].~~

56 (b) The information obtained by the division under this section shall be disclosed to:

57 (i) a party to an unemployment insurance hearing before an administrative law judge of

58 the department or a review by the Workforce Appeals Board to the extent necessary for the
59 proper presentation of the party's case; or

60 (ii) an employer, upon request in writing for any information concerning ~~[claims]~~ a
61 claim for ~~[benefits]~~ a benefit with respect to ~~[the employer's former employees]~~ a former
62 employee of the employer.

63 (5) The information obtained by the division under this section may be disclosed to:

64 (a) an employee of the department in the performance of the employee's duties in
65 administering this chapter or other programs of the department;

66 (b) an employee of the Labor Commission for the purpose of carrying out the programs
67 administered by the Labor Commission;

68 (c) an employee of the Department of Commerce for the purpose of carrying out the
69 programs administered by the Department of Commerce;

70 ~~[(e)]~~ (d) an employee of the governor's office ~~[and other]~~ or another state governmental
71 ~~[agencies]~~ agency administratively responsible for statewide economic development, to the
72 extent necessary for economic development policy analysis and formulation;

73 ~~[(d)]~~ (e) an employee of ~~[other]~~ another governmental ~~[agencies]~~ agency that ~~[are]~~ is
74 specifically identified and authorized by federal or state law to receive the information for the
75 purposes stated in the law authorizing the employee of the agency to receive the information;

76 ~~[(e)]~~ (f) an employee of a governmental agency or workers' compensation insurer to the
77 extent the information will aid in:

78 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against;

79 (A) a workers' compensation program~~[-];~~ or

80 (B) public assistance funds~~[-];~~ or

81 (ii) the recovery of overpayments of workers' compensation or public assistance funds;

82 ~~[(f)]~~ (g) an employee of a law enforcement agency to the extent the disclosure is
83 necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;

84 ~~[(g)]~~ (h) an employee of the State Tax Commission or the Internal Revenue Service for
85 the purposes of:

- 86 (i) audit verification or simplification[;];
- 87 (ii) state or federal tax compliance[;];
- 88 (iii) verification of [~~Standard Industry Codes, and statistics;~~] a code or classification of

89 the:

90 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
91 the President, Office of Management and Budget; or

92 (B) 2002 North American Industry Classification System of the federal Executive
93 Office of the President, Office of Management and Budget; and

94 (iv) statistics;

95 [~~(h)~~] (i) an employee or contractor of the department or an educational institution, or
96 other governmental entity engaged in workforce investment and development activities under
97 the Workforce Investment Act of 1998 for the purpose of:

98 (i) coordinating services with the department[;];

99 (ii) evaluating the effectiveness of those activities[;]; and

100 (iii) measuring performance;

101 [~~(i)~~] (j) an employee of the Governor's Office of Economic Development, for the
102 purpose of periodically publishing in the Directory of Business and Industry, the name, address,
103 telephone number, number of employees by range, [~~Standard Industrial Code~~] code or
104 classification of an employer, and type of ownership of Utah employers;

105 [~~(j)~~] (k) the public for any purpose following a written waiver by all interested parties of
106 their rights to nondisclosure; or

107 [~~(k)~~] (l) an individual whose wage data [~~has been~~] is submitted to the department by an
108 employer, so long as no information other than the individual's wage data and the identity of the
109 [~~party~~] employer who submitted the information is provided to the individual.

110 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with
111 the exception of Subsections (5)(a) and [~~(f)~~](g), shall be made only if:

112 (a) the division determines that the disclosure will not have a negative effect on:

113 (i) the willingness of employers to report wage and employment information; or [~~on~~]

114 (ii) the willingness of individuals to file claims for unemployment benefits; and
115 (b) the agency enters into a written agreement with the division in accordance with rules
116 made by the department.

117 (7) (a) The employees of a division of the department other than the Workforce
118 Development and Information Division and the Unemployment Insurance Division or an agency
119 receiving private information from the division under this chapter are subject to the same
120 requirements of privacy and confidentiality and to the same penalties for misuse or improper
121 disclosure of the information as employees of the division.

122 (b) Use of private information obtained from the department by a person, or for a
123 purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

124 Section 2. Section **72-1-208.5** is amended to read:

125 **72-1-208.5. Definition -- Cooperation with metropolitan planning organizations --**
126 **Cooperation in plans and programs required.**

127 (1) As used in this section, "metropolitan planning organization" means an organization
128 established under 23 U.S.C. Sec. 134.

129 (2) The department shall cooperate with a metropolitan planning organization in the
130 metropolitan planning organization's responsibility to carry out a continuing, cooperative, and
131 comprehensive process for transportation planning and project programming.

132 (3) If a metropolitan planning organization has a contiguous boundary with another
133 metropolitan planning organization, the department shall cooperate with those organizations if
134 the metropolitan planning organizations have:

135 (a) coordinated project priorities, transportation plans, and transportation improvement
136 programs; and

137 (b) submitted joint priorities, plans, and programs to the department as comprehensive,
138 integrated transportation plans.

139 (4) Subject to the provisions of 23 U.S.C. Sec. 134, if the governor and the affected
140 local units of government jointly determine that metropolitan planning organizations have failed
141 to meet the guidelines under Subsection (3), the governor and local units of government may

142 redesignate or realign the metropolitan planning organizations.

143 (5) (a) A metropolitan planning organization is a governmental agency that is eligible to
144 receive employment information from the Unemployment Insurance Division in accordance with
145 Subsection 35A-4-312(5)~~(d)~~(e) for the purpose of preparing transportation plans as required
146 by 23 U.S.C. Sec. 134.

147 (b) Information obtained under Subsection (5)(a) is limited to the employer's:

148 (i) name;

149 (ii) worksite address;

150 (iii) industrial classification; and

151 (iv) number of employees.