

Representative Rebecca P. Edwards proposes the following substitute bill:

WORKFORCE SERVICES AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Employment Security Act.

Highlighted Provisions:

This bill:

▶ allows the Unemployment Insurance Division to disclose certain information to a division of the United States Department of Labor.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-312, as last amended by Laws of Utah 2013, Chapter 473

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

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

35A-4-312. Records.

(1) (a) An employing unit shall keep true and accurate work records containing



26 information the department may prescribe by rule.

27 (b) A record shall be open to inspection and subject to being copied by the division or
28 its authorized representatives at a reasonable time and as often as necessary.

29 (c) An employing unit shall make a record available in the state for three years after the
30 calendar year in which the services are rendered.

31 (2) The division may require from an employing unit a sworn or unsworn report with
32 respect to a person employed by the employing unit that the division considers necessary for
33 the effective administration of this chapter.

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35 information obtained under this chapter or obtained from an individual may not be published or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

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

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

40 (ii) if the Labor Commission enters into a written agreement with the division under
41 Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:

42 (A) Title 34, Chapter 23, Employment of Minors;

43 (B) Title 34, Chapter 28, Payment of Wages;

44 (C) Title 34, Chapter 40, Utah Minimum Wage Act; or

45 (D) Title 34A, Utah Labor Code;

46 (iii) under the terms of a court order obtained under Subsection [63G-2-202\(7\)](#) and
47 Section [63G-2-207](#); or

48 (iv) under the terms of a written agreement between the Office of State Debt Collection
49 and the division as provided in Subsection (5).

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

51 (i) a party to an unemployment insurance hearing before an administrative law judge of
52 the department or a review by the Workforce Appeals Board to the extent necessary for the
53 proper presentation of the party's case; or

54 (ii) an employer, upon request in writing for information concerning a claim for a
55 benefit with respect to a former employee of the employer.

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

- 57 (a) an employee of the department in the performance of the employee's duties in
58 administering this chapter or other programs of the department;
- 59 (b) an employee of the Labor Commission for the purpose of carrying out the programs
60 administered by the Labor Commission;
- 61 (c) an employee of the Department of Commerce for the purpose of carrying out the
62 programs administered by the Department of Commerce;
- 63 (d) an employee of the governor's office or another state governmental agency
64 administratively responsible for statewide economic development, to the extent necessary for
65 economic development policy analysis and formulation;
- 66 (e) an employee of another governmental agency that is specifically identified and
67 authorized by federal or state law to receive the information for the purposes stated in the law
68 authorizing the employee of the agency to receive the information;
- 69 (f) an employee of a governmental agency or workers' compensation insurer to the
70 extent the information will aid in:
- 71 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:
72 (A) a workers' compensation program; or
73 (B) public assistance funds; or
- 74 (ii) the recovery of overpayments of workers' compensation or public assistance funds;
- 75 (g) an employee of a law enforcement agency to the extent the disclosure is necessary
76 to avoid a significant risk to public safety or in aid of a felony criminal investigation;
- 77 (h) an employee of the State Tax Commission or the Internal Revenue Service for the
78 purposes of:
- 79 (i) audit verification or simplification;
80 (ii) state or federal tax compliance;
81 (iii) verification of a code or classification of the:
82 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
83 the President, Office of Management and Budget; or
84 (B) 2002 North American Industry Classification System of the federal Executive
85 Office of the President, Office of Management and Budget; and
86 (iv) statistics;
- 87 (i) an employee or contractor of the department or an educational institution, or other

- 88 governmental entity engaged in workforce investment and development activities under the
89 Workforce Investment Act of 1998 for the purpose of:
- 90 (i) coordinating services with the department;
 - 91 (ii) evaluating the effectiveness of those activities; and
 - 92 (iii) measuring performance;
 - 93 (j) an employee of the Governor's Office of Economic Development, for the purpose of
94 periodically publishing in the Directory of Business and Industry, the name, address, telephone
95 number, number of employees by range, code or classification of an employer, and type of
96 ownership of Utah employers;
 - 97 (k) the public for any purpose following a written waiver by all interested parties of
98 their rights to nondisclosure;
 - 99 (l) an individual whose wage data is submitted to the department by an employer, if no
100 information other than the individual's wage data and the identity of the employer who
101 submitted the information is provided to the individual;
 - 102 (m) an employee of the Insurance Department for the purpose of administering Title
103 31A, Chapter 40, Professional Employer Organization Licensing Act;
 - 104 (n) an employee of the Office of State Debt Collection for the purpose of collecting
105 state accounts receivable as provided in Section [63A-3-502](#); [or]
 - 106 (o) a creditor, under a court order, to collect on a judgment as provided in Section
107 [35A-4-314](#)[-]; or
 - 108 (p) an employee of the Wage and Hour Division of the United States Department of
109 Labor for the purpose of carrying out the programs administered by the Wage and Hour
110 Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of
111 costs described in 20 C.F.R. 603.8(d) and is limited to:
 - 112 (i) the name and identifying information of an employer found by the department to
113 have misclassified one or more workers under Subsection [35A-4-204](#)(3);
 - 114 (ii) the total number of misclassified workers for that employer; and
 - 115 (iii) the aggregate amount of misclassified wages for that employer.
 - 116 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5),
117 with the exception of Subsections (5)(a), (g), and (o), may be made if:
 - 118 (a) the division determines that the disclosure will not have a negative effect on:

119 (i) the willingness of employers to report wage and employment information; or
120 (ii) the willingness of individuals to file claims for unemployment benefits; and
121 (b) the agency enters into a written agreement with the division in accordance with
122 rules made by the department.

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

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