

## HB0065S02 compared with HB0065S01

~~text~~ shows text that was in HB0065S01 but was deleted in HB0065S02.

text shows text that was not in HB0065S01 but was inserted into HB0065S02.

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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: \_\_\_\_\_

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#### 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~~;~~;
- ▶ grants certain rulemaking authority to the division; and
- ▶ provides a sunset date.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

None

## HB0065S02 compared with HB0065S01

### Utah Code Sections Affected:

AMENDS:

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

**63I-1-235**, as last amended by Laws of Utah 2014, Chapter 127

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*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 information the department may prescribe by rule.

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

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

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

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or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in a manner revealing the employing unit's or individual's identity.

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

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

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

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

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

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

(D) Title 34A, Utah Labor Code;

(iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207; or

## HB0065S02 compared with HB0065S01

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

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

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

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

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

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

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

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

(d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:

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

(A) a workers' compensation program; or

(B) public assistance funds; or

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

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

(h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:

## HB0065S02 compared with HB0065S01

- (i) audit verification or simplification;
- (ii) state or federal tax compliance;
- (iii) verification of a code or classification of the:
  - (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
  - (B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
- (iv) statistics;
  - (i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Investment Act of 1998 for the purpose of:
    - (i) coordinating services with the department;
    - (ii) evaluating the effectiveness of those activities; and
    - (iii) measuring performance;
  - (j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;
- (k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;
- (l) an individual whose wage data is submitted to the department by an employer, if no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual;
- (m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act;
- (n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-3-502; ~~or~~
- (o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314~~[-];~~ or
- (p) an employee of the Wage and Hour Division of the United States Department of Labor for the purpose of carrying out the programs administered by the Wage and Hour

## HB0065S02 compared with HB0065S01

Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of costs described in 20 C.F.R. 603.8(d) and:

(i) is limited to:

(~~ii~~A) the name and identifying information of an employer found by the department to have misclassified one or more workers under Subsection 35A-4-204(3);

(~~iii~~B) the total number of misclassified workers for that employer; and

(~~iiii~~C) the aggregate amount of misclassified wages for that employer~~;~~

(ii) an employer is given the opportunity to cure a misclassification of one or more workers, in a manner established by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, before the information is disclosed as described in this Subsection (5)(p); and

(iii) an annual report regarding the benefit to the state from disclosure of information under this Subsection (5)(p) is provided to the department for inclusion in the department's annual report described in Section 35A-1-109.

(6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a), (g), and (o), may be made if:

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

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

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

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

Section 2. Section 63I-1-235 is amended to read:

63I-1-235. Repeal dates, Title 35A.

(1) Title 35A, Utah Workforce Services Code, is repealed July 1, 2015.

## **HB0065S02 compared with HB0065S01**

(2) Subsection 35A-4-312(5)(p) is repealed July 1, 2017.

[~~2~~] (3) Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act, is repealed July 1, 2016.

[~~3~~] (4) Title 35A, Chapter 8, Part 18, Transitional Housing and Community Development Advisory Council, is repealed July 1, 2014.

[~~4~~] (5) Title 35A, Chapter 11, Women in the Economy Commission Act, is repealed July 1, 2016.