

Representative A. Cory Maloy proposes the following substitute bill:

NONPROFIT ENTITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies provisions related to disclosure of nonprofit entity related personal information by public agencies.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ clarifies the individuals about whom personal information may not be disclosed;
- ▶ amends the exemptions from the prohibition of disclosing personal information;
- ▶ addresses damages; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-26-102, as last amended by Laws of Utah 2023, Chapter 16

63G-26-103, as last amended by Laws of Utah 2023, Chapter 33



26 **63G-26-104**, as enacted by Laws of Utah 2020, Chapter 393



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

29 Section 1. Section **63G-26-102** is amended to read:

30 **63G-26-102. Definitions.**

31 As used in this chapter:

32 (1) "Nonprofit entity" means an entity exempt from federal income tax under Section
33 501(c), Internal Revenue Code, or that has submitted an application with the Internal Revenue
34 Service for recognition of an exemption under Section 501(c), Internal Revenue Code.

35 (2) "Personal information" means a record or other compilation of data that identifies a
36 person as a donor to [an entity exempt from federal income tax under Section 501(c) of the
37 Internal Revenue Code], member of, or volunteer of a nonprofit entity.

38 ~~[(2)]~~ (3) "Public agency" means a state or local government entity, including:

39 (a) a department, division, agency, office, commission, board, or other government
40 organization;

41 (b) a political subdivision, including a county, city, town, metro township, special
42 district, or special service district;

43 (c) a public school, school district, charter school, or public higher education
44 institution; or

45 (d) a judicial or quasi-judicial body.

46 Section 2. Section **63G-26-103** is amended to read:

47 **63G-26-103. Protection of personal information.**

48 (1) Except as provided in Subsections (2), (3), and ~~[(5)]~~ (4), a public agency may not:

49 (a) require an individual who is a donor to, member of, or volunteer of a nonprofit
50 entity to provide the public agency with personal information or otherwise compel the release
51 of personal information;

52 (b) require ~~[an entity exempt from federal income tax under Section 501(c) of the~~
53 ~~Internal Revenue Code]~~ a nonprofit entity to provide the public agency with personal
54 information or compel the nonprofit entity to release personal information;

55 (c) release, publicize, or otherwise publicly disclose personal information in possession
56 of a public agency; or

57 (d) request or require a current or prospective contractor or grantee of the public
58 agency to provide the public agency with a list of ~~[entities exempt from federal income tax~~
59 ~~under Section 501(c) of the Internal Revenue Code]~~ nonprofit entities to which the current or
60 prospective contractor or grantee has provided financial or nonfinancial support.

61 (2) Subsection (1) does not apply to:

62 (a) a disclosure of personal information required under Title 20A, Election Code, or
63 Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act~~[, or any other legal requirement~~
64 ~~relating to reporting campaign contributions, campaign expenditures, lobbying disclosures, or~~
65 ~~lobbying expenditures];~~

66 ~~[(b) a disclosure of personal information expressly required by law;]~~

67 ~~[(e)]~~ (b) [a disclosure of personal information voluntarily made] the release of personal
68 information by a public agency if the information is voluntarily released to the public by the
69 individual or nonprofit entity to which the personal information relates, including:

70 (i) as part of public comment or in a public meeting; or

71 (ii) in another manner that is publicly accessible;

72 ~~[(d)]~~ (c) a disclosure of personal information pursuant to a lawful warrant or court
73 order issued by a court [of competent] with jurisdiction;

74 ~~[(e)]~~ (d) a lawful request for discovery of personal information in litigation or a
75 criminal proceeding if the court with jurisdiction:

76 (i) finds that the requestor demonstrates a compelling need for the personal information
77 by clear and convincing evidence; and

78 (ii) issues a protective order barring disclosure of personal information to a person not
79 named in the litigation;

80 (e) admission of personal information as relevant evidence before a court with
81 jurisdiction, except that a court may not publicly reveal personal information absent a specific
82 finding of good cause;

83 ~~[(f) the use of personal information in a legal proceeding;]~~

84 ~~[(g) a public agency sharing personal information with another public agency in~~
85 ~~accordance with the requirements of law; or]~~

86 ~~[(h)]~~ (f) a nonprofit created under Title 11, Chapter 13a, Governmental Nonprofit
87 Corporations Act[-]; or

88 (g) a nonprofit entity's disclosure of personal information of a member or volunteer to a
89 public agency for the limited purpose of allocating, disbursing, or administering funds or
90 conducting a background check, to comply with the requirements of a statute, rule, or
91 regulation.

92 (3) Subsections (1)(a), (b), and (d) do not apply to:

93 (a) administration or enforcement of Title 13, Chapter 11, Utah Consumer Sales
94 Practices Act, or Title 13, Chapter 22, Charitable Solicitations Act;

95 (i) including the required submission of Internal Revenue Service Form 990, excluding
96 Schedule B, to the Department of Commerce; and

97 (ii) except that the public agency may only use personal information in connection with
98 a specific administration or enforcement provision to which the request relates and for a related
99 proceeding;

100 (b) the request or use of personal information necessary to the State Tax Commission's
101 administration of tax or motor vehicle laws, except that the State Tax Commission may only
102 use personal information in connection with the administration of tax or motor vehicle laws or
103 for a related proceeding; or

104 (c) access to personal information by the Office of the Legislative Auditor General to
105 conduct an audit authorized under Utah Constitution, Article VI, Section 33, and Section
106 36-12-15, or the state auditor's office to conduct an audit authorized under Title 67, Chapter 3,
107 Auditor, except the legislative auditor general or state auditor may only use the personal
108 information in connection with the specific audit to which the request relates.

109 [~~(4) A court shall consider whether to:~~]

110 [~~(a) limit a request for discovery of personal information; or~~]

111 [~~(b) issue a protective order in relation to the disclosure of personal information~~
112 ~~obtained or used in relation to a legal proceeding.]~~

113 [~~(5)] (4) Subsection (1) does not apply to disclosure of a contributor to a sponsoring
114 organization, as those terms are defined in Section 41-1a-1601.~~

115 Section 3. Section 63G-26-104 is amended to read:

116 **63G-26-104. Enforcement -- Penalty.**

117 (1) (a) A person whose personal information is provided or disclosed in violation of
118 this chapter may bring a civil action for appropriate injunctive relief, damages, or both.

119 (b) When a court awards damages under this section, the court shall order:
120 (i) an amount of not less than \$2,500 to compensate for injury or loss caused by each
121 violation of this chapter; or
122 (ii) for an intentional violation of this chapter, an amount not to exceed three times the
123 amount described in Subsection (1)(b)(i).
124 (2) A court may award court costs and attorney fees to a person that brings an action
125 described in Subsection (1) if the person prevails in that action.
126 (3) A person that knowingly violates a provision of Section [63G-26-103](#) is guilty of a
127 class C misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not
128 more than \$1,000, or both.
129 Section 4. **Effective date.**
130 This bill takes effect on May 1, 2024.