

HB0484S02 compared with HB0484S01

~~text~~ shows text that was in HB0484S01 but was deleted in HB0484S02.

text shows text that was not in HB0484S01 but was inserted into HB0484S02.

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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

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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

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

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

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

63G-26-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

(d) a judicial or quasi-judicial body.

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

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

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

(a) require an individual who is a donor to ~~{, member of, or volunteer of}~~ a nonprofit entity to provide the public agency with personal information or otherwise compel the release

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of personal information;

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

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

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

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

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

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

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

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

(ii) in another manner that is publicly accessible;

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

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

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

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

(e) admission of personal information as relevant evidence before a court with jurisdiction, except that a court may not publicly reveal personal information absent a specific

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finding of good cause:

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

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

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

~~(g) to the Department of Financial Institutions to conduct regulatory oversight of federally insured depositories to comply with the requirements of a statute, rule, or regulation.~~

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

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

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

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

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

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

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

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

~~[(b) issue a protective order in relation to the disclosure of personal information]~~

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~~obtained or used in relation to a legal proceeding.]~~

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

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

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

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

(b) When a court awards damages under this section, the court shall order:

(i) an amount of not less than \$2,500 to compensate for injury or loss caused by each violation of this chapter; or

(ii) for an intentional violation of this chapter, an amount not to exceed three times the amount described in Subsection (1)(b)(i).

(2) A court may award court costs and attorney fees to a person that brings an action described in Subsection (1) if the person prevails in that action.

(3) A person that knowingly violates a provision of Section 63G-26-103 is guilty of a class C misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both.

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.