

Senator Daniel McCay 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] 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 a nonprofit entity to provide the public
50 agency with personal information or otherwise compel the release of personal information;

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

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

56 (d) request or require a current or prospective contractor or grantee of the public

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (g) disclosure of personal information to the Department of Financial Institutions to

88 conduct regulatory oversight of federally insured depositories to comply with the requirements
89 of statute, rule, or regulation;

90 (h) disclosure of personal information to the Insurance Department to conduct
91 regulatory oversight of persons licensed under Title 31A, Insurance Code, to comply with the
92 requirements of statute, rule, or regulation; or

93 (i) disclosure of personal information that is required, requested, or released by the
94 following divisions of the Department of Commerce, provided that each division may only use
95 personal information in connection with the specific request to which the personal information
96 relates and for a related proceeding;

97 (i) by the Division of Consumer Protection in accordance with the Division of
98 Consumer Protection's administration and enforcement of a chapter described in Section
99 [13-2-1](#);

100 (ii) by the Division of Corporations and Commercial Code in accordance with the
101 Division of Corporations and Commercial Code's authority under Title 13, Chapter 1a,
102 Division of Corporations and Commercial Code, and in the course of the Division of
103 Corporations and Commercial Code's administration of:

104 (A) Title 3, Uniform Agricultural Cooperative Association Act;

105 (B) Title 16, Corporations;

106 (C) Title 42, Chapter 2, Conducting Business Under Assumed Name;

107 (D) Title 48, Unincorporated Business Entity Act;

108 (E) Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks
109 Act; and

110 (F) Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and

111 (iii) by the Division of Securities to conduct regulatory oversight of persons regulated
112 under Title 61, Chapter 1, Utah Uniform Securities Act, to comply with the requirements of
113 statute, rule, or regulation.

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

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

117 [~~(b)~~] (a) the request or use of personal information necessary to the State Tax
118 Commission's administration of tax or motor vehicle laws, except that the State Tax

119 Commission may only use personal information in connection with the administration of tax or
120 motor vehicle laws or for a related proceeding; or

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

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

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

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

130 ~~[(5)]~~ (4) Subsection (1) does not apply to disclosure of a contributor to a sponsoring
131 organization, as those terms are defined in Section 41-1a-1601.

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

133 **63G-26-104. Enforcement -- Penalty.**

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

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

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

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

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

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

147 Section 4. **Effective date.**

148 This bill takes effect on May 1, 2024.