

1 **DEBT COLLECTION INFORMATION AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Mike K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Employment Security Act by amending provisions for the
10 disclosure of employment information for debt collections.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ allows certain employment records to be disclosed by the Unemployment Insurance
14 Division to a creditor, if the creditor obtains a court order;

15 ▶ provides procedures for:

16 • a court to grant or deny an order requiring disclosure of the employment
17 information; and

18 • the creditor to deliver the court order to the division, pay a fee, and receive the
19 information from the division;

20 ▶ provides restrictions on the use and disclosure of the employment information;

21 ▶ provides for auditing for potential misuse of the information;

22 ▶ provides certain penalties for misuse of the information; and

23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 35A-4-312, as last amended by Laws of Utah 2012, Chapter 369

31 ENACTS:

32 35A-4-314, Utah Code Annotated 1953

33

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

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

36 **35A-4-312. Records.**

37 (1) (a) An employing unit shall keep true and accurate work records containing [any]
38 information the department may prescribe by rule.

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

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

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

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47 information obtained under this chapter or obtained from an individual may not be published or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

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

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

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

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

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

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

58 (D) Title 34A, Utah Labor Code;
59 (iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and
60 Section 63G-2-207; or
61 (iv) under the terms of a written agreement between the Office of State Debt Collection
62 and the division as provided in Subsection (5).
63 (b) The information obtained by the division under this section shall be disclosed to:
64 (i) a party to an unemployment insurance hearing before an administrative law judge of
65 the department or a review by the Workforce Appeals Board to the extent necessary for the
66 proper presentation of the party's case; or
67 (ii) an employer, upon request in writing for [any] information concerning a claim for a
68 benefit with respect to a former employee of the employer.
69 (5) The information obtained by the division under this section may be disclosed to:
70 (a) an employee of the department in the performance of the employee's duties in
71 administering this chapter or other programs of the department;
72 (b) an employee of the Labor Commission for the purpose of carrying out the programs
73 administered by the Labor Commission;
74 (c) an employee of the Department of Commerce for the purpose of carrying out the
75 programs administered by the Department of Commerce;
76 (d) an employee of the governor's office or another state governmental agency
77 administratively responsible for statewide economic development, to the extent necessary for
78 economic development policy analysis and formulation;
79 (e) an employee of another governmental agency that is specifically identified and
80 authorized by federal or state law to receive the information for the purposes stated in the law
81 authorizing the employee of the agency to receive the information;
82 (f) an employee of a governmental agency or workers' compensation insurer to the
83 extent the information will aid in:
84 (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:
85 (A) a workers' compensation program; or

86 (B) public assistance funds; or
87 (ii) the recovery of overpayments of workers' compensation or public assistance funds;
88 (g) an employee of a law enforcement agency to the extent the disclosure is necessary
89 to avoid a significant risk to public safety or in aid of a felony criminal investigation;
90 (h) an employee of the State Tax Commission or the Internal Revenue Service for the
91 purposes of:
92 (i) audit verification or simplification;
93 (ii) state or federal tax compliance;
94 (iii) verification of a code or classification of the:
95 (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of
96 the President, Office of Management and Budget; or
97 (B) 2002 North American Industry Classification System of the federal Executive
98 Office of the President, Office of Management and Budget; and
99 (iv) statistics;
100 (i) an employee or contractor of the department or an educational institution, or other
101 governmental entity engaged in workforce investment and development activities under the
102 Workforce Investment Act of 1998 for the purpose of:
103 (i) coordinating services with the department;
104 (ii) evaluating the effectiveness of those activities; and
105 (iii) measuring performance;
106 (j) an employee of the Governor's Office of Economic Development, for the purpose of
107 periodically publishing in the Directory of Business and Industry, the name, address, telephone
108 number, number of employees by range, code or classification of an employer, and type of
109 ownership of Utah employers;
110 (k) the public for any purpose following a written waiver by all interested parties of
111 their rights to nondisclosure;
112 (l) an individual whose wage data is submitted to the department by an employer, [~~so~~
113 ~~long as~~] if no information other than the individual's wage data and the identity of the employer

114 who submitted the information is provided to the individual;

115 (m) an employee of the Insurance Department for the purpose of administering Title
116 31A, Chapter 40, Professional Employer Organization Licensing Act; [or]

117 (n) an employee of the Office of State Debt Collection for the purpose of collecting
118 state accounts receivable as provided in Section 63A-3-502[-]; or

119 (o) a creditor, under a court order, to collect on a judgment as provided in Section
120 35A-4-314.

121 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5),
122 with the exception of Subsections (5)(a) [~~and~~], (g), [~~staff~~] and (o) may be made [~~only~~] if:

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

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

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

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

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

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

135 Section 2. Section **35A-4-314** is enacted to read:

136 **35A-4-314. Disclosure of information for debt collection -- Court order --**
137 **Procedures -- Use of information restrictions -- Penalties.**

138 (1) The division shall disclose to a creditor who has obtained judgment against a debtor
139 the name and address of the last known employer of the debtor if:

140 (a) the judgment creditor obtains a court order requiring disclosure of the information
141 as described in Subsection (2); and

142 (b) the judgment creditor completes the requirements described in Subsection (3),
143 including entering into a written agreement with the division.

144 (2) (a) A court shall grant an order to disclose the information described in Subsection
145 (1) if, under the applicable Utah Rules of Civil Procedure:

146 (i) the judgment creditor files a motion with the court, which includes a copy of the
147 judgment, and serves a copy of the motion to the judgment debtor and the division;

148 (ii) the judgment debtor and the division have the opportunity to respond to the motion;
149 and

150 (iii) the court denies or overrules any objection to disclosure in the judgment debtor's
151 and the division's response.

152 (b) A court may not grant an order to disclose the information described in Subsection
153 (1), if the court finds that the division has established that disclosure will have a negative effect
154 on:

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

156 (ii) the willingness of individuals to file claims for unemployment benefits.

157 (c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply
158 to information sought through a court order as described in this section.

159 (3) If a court order is granted in accordance with this section, a judgment creditor shall:

160 (a) provide to the division a copy of the order requiring the disclosure;

161 (b) enter into a written agreement with the division, in a form approved by the division;

162 (c) pay the division a reasonable fee that reflects the cost for processing the request as
163 established by department rule; and

164 (d) comply with the data safeguard and security measures described in 20 C.F.R. Sec.
165 603.9 with respect to information received from the division under this section.

166 (4) If a judgment creditor complies with Subsection (3), the division shall provide the
167 information to the judgment creditor within 14 business days after the day on which the
168 creditor complies with Subsection (3).

169 (5) A judgment creditor may not:

170 (a) use the information obtained under this section for a purpose other than satisfying
171 the judgment between the creditor and debtor; or

172 (b) disclose or share the information with any other person.

173 (6) The division may audit a judgment creditor or other party receiving information
174 under this section for compliance with the data safeguard and security measures described in 20
175 C.F.R. Sec. 603.9.

176 (7) If a judgment creditor or other party fails to comply with the data safeguard and
177 security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to
178 a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General
179 as follows:

180 (a) the attorney general, on the attorney general's own behalf or on behalf of the
181 division, may file an action in district court to enforce the civil penalty; and

182 (b) if the attorney general prevails in enforcing the civil penalty against the judgment
183 creditor or other party:

184 (i) the attorney general is entitled to an award for reasonable attorney fees, court costs,
185 and investigative expenses; and

186 (ii) the civil penalty shall be deposited into the special administrative expense account
187 described in Subsection 35A-4-506(1).