

SB 5439 - S AMD 27
By Senator Keiser

ADOPTED 02/27/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 50.13.020 and 2004 c 121 s 5 are each amended to
4 read as follows:

5 Any information or records concerning an individual or employing
6 unit obtained by the employment security department (~~(of employment~~
7 ~~security)~~) pursuant to the administration of this title (~~(or other~~
8 ~~programs for which the department has responsibility)~~) shall be
9 private and confidential, except as otherwise provided in this
10 chapter. This chapter does not create a rule of evidence. Information
11 or records may be released by the employment security department (~~(of~~
12 ~~employment security)~~) when the release is:

13 (1) Required by the federal government in connection with, or as
14 a condition of funding for, a program being administered by the
15 employment security department; or

16 (2) Requested by a county clerk for the purposes of RCW
17 9.94A.760.

18 The provisions of RCW 50.13.060 (1) (a), (b) and (c) will not
19 apply to such release.

20 **Sec. 2.** RCW 50.13.030 and 2005 c 274 s 320 are each amended to
21 read as follows:

22 The commissioner shall have the authority to adopt, amend, or
23 rescind rules interpreting and implementing the provisions of this
24 chapter. (~~(In particular, these rules shall specify the procedure to~~
25 ~~be followed to obtain information or records to which the public has~~
26 ~~access under this chapter or chapter 42.56 RCW.)~~)

27 **Sec. 3.** RCW 50.13.040 and 2005 c 274 s 321 are each amended to
28 read as follows:

29 (1) An individual shall have access to all records and
30 information concerning that individual held by the employment

1 security department, unless the information is exempt from disclosure
2 under RCW 42.56.410.

3 (2) An employing unit shall have access to its own records and to
4 any records and information relating to a benefit claim by an
5 individual if the employing unit is either the individual's last
6 employer or is the individual's base year employer.

7 (3) An employing unit shall have access to any records and
8 information relating to any decision to allow or deny benefits if:

9 (a) The decision is based on employment or an offer of employment
10 with the employing unit; or

11 (b) If the decision is based on material information provided by
12 the employing unit.

13 (4) An employing unit shall have access to general summaries of
14 benefit claims by individuals whose benefits are chargeable to the
15 employing unit's experience rating or reimbursement account.

16 (5) The employment security department may disclose records and
17 information deemed confidential under this chapter to a third party
18 acting on behalf of an individual or employing unit that would
19 otherwise be eligible to receive records under subsections (1)
20 through (4) of this section when the employment security department
21 receives a release from the individual, the employing unit, or the
22 third party. The release must be signed and include a statement:

23 (a) Specifically identifying the information that is to be
24 disclosed;

25 (b) That state government files will be accessed to obtain the
26 information;

27 (c) Of the specific purpose or purposes for which the information
28 is sought and that the information obtained under the release will
29 only be used for that purpose or purposes; and

30 (d) Indicating all the parties who may receive the information
31 disclosed.

32 **Sec. 4.** RCW 50.13.060 and 2011 1st sp.s. c 43 s 466 are each
33 amended to read as follows:

34 (1) Unless otherwise required by federal law, only state and
35 local governmental agencies (~~(, including law enforcement agencies,~~
36 ~~prosecuting agencies, and the executive branch, whether state, local,~~
37 ~~or federal shall)) and federally recognized Indian tribes as defined~~
38 in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act
39 may have access to information or records deemed private and

1 confidential under this chapter if the information or records are
2 needed by the agency for official purposes and:

3 (a) The agency submits an application in (~~(writing to)~~) a manner
4 specified by the employment security department for the records or
5 information containing a statement of the official purposes for which
6 the information or records are needed and specific identification of
7 the records or information sought from the employment security
8 department; and

9 (b) The director, commissioner, chief executive, or other
10 official of the agency requesting records or information has verified
11 the need for the specific information (~~(in writing either on the~~
12 ~~application or on a separate document)~~); and

13 (c) The agency requesting access has served a copy of the
14 application for records or information on the individual or employing
15 unit whose records or information are sought and has provided the
16 employment security department with proof of service. Service shall
17 be made in a manner which conforms to the civil rules for superior
18 court. The requesting agency shall include with the copy of the
19 application a statement to the effect that the individual or
20 employing unit may contact the public records officer of the
21 employment security department to state any objections to the release
22 of the records or information. The employment security department
23 shall not act upon the application of the requesting agency until at
24 least five days after service on the concerned individual or
25 employing unit. The employment security department shall consider any
26 objections raised by the concerned individual or employing unit in
27 deciding whether the requesting agency needs the information or
28 records for official purposes.

29 (2) The requirements of subsection(~~(s)~~) (1) (~~(and (9))~~) of this
30 section shall not apply to the state legislative branch. The state
31 legislature (~~(shall)~~) may have access to information or records
32 deemed private and confidential under this chapter, if the
33 legislature or a legislative committee finds that the information or
34 records are necessary and for official purposes. (~~(If the employment~~
35 ~~security department does not make information or records available as~~
36 ~~provided in this subsection, the legislature may exercise its~~
37 ~~authority granted by chapter 44.16 RCW.)~~)

38 (3) In cases of emergency the governmental agency requesting
39 access shall not be required to formally comply with the provisions
40 of subsection (1) of this section at the time of the request if the

1 procedures required by subsection (1) of this section are complied
2 with by the requesting agency following the receipt of any records or
3 information deemed private and confidential under this chapter. An
4 emergency is defined as a situation in which irreparable harm or
5 damage could occur if records or information are not released
6 immediately.

7 (4) The requirements of subsection (1)(c) of this section shall
8 not apply to state and local governmental agencies and federally
9 recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u)
10 of the federal unemployment tax act where the procedures would
11 frustrate the investigation of possible violations of criminal laws
12 or to the release of employing unit names, addresses, number of
13 employees, and aggregate employer wage data for the purpose of state
14 governmental agencies preparing small business economic impact
15 statements under chapter 19.85 RCW or preparing cost-benefit analyses
16 under RCW 34.05.328(1) (c) and (d). (~~Information provided by the~~
17 ~~department and held to be private and confidential under state or~~
18 ~~federal laws must not be misused or released to unauthorized parties.~~
19 ~~A person who misuses such information or releases such information to~~
20 ~~unauthorized parties is subject to the sanctions in RCW 50.13.080.~~)

21 (5) State and local governmental agencies (~~shall~~) and federally
22 recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u)
23 of the federal unemployment tax act may have access to certain
24 records or information (~~, limited to such items as names, addresses,~~
25 ~~social security numbers, and general information about benefit~~
26 ~~entitlement or employer information possessed by the department,~~)
27 deemed private and confidential under this chapter for comparison
28 purposes with records or information possessed by the requesting
29 agency to detect improper or fraudulent claims, (~~or~~) to determine
30 potential tax liability or employer compliance with registration and
31 licensing requirements, or for reasons otherwise within the discharge
32 of their official duties. In those cases the state or local
33 governmental agency or federally recognized Indian tribe as defined
34 in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act
35 shall not be required to comply with subsection (1)(c) of this
36 section, but the requirements of (~~the remainder of~~) subsection (1)
37 (a) and (b) of this section must be satisfied.

38 (6) Governmental agencies may have access to certain records and
39 information, limited to employer information possessed by the
40 employment security department for purposes authorized in chapter

1 50.38 RCW. Access to these records and information is limited to only
2 those individuals conducting authorized statistical analysis,
3 research, and evaluation studies. Only in cases consistent with the
4 purposes of chapter 50.38 RCW are governmental agencies not required
5 to comply with subsection (1)(c) of this section, but the
6 requirements of ~~((the remainder of))~~ subsection (1)(a) and (b) of
7 this section must be satisfied. ~~((Information provided by the
8 department and held to be private and confidential under state or
9 federal laws shall not be misused or released to unauthorized parties
10 subject to the sanctions in RCW 50.13.080.))~~

11 (7) Disclosure to governmental agencies of information or records
12 obtained by the employment security department from the federal
13 government shall be governed by any applicable federal law or any
14 agreement between the federal government and the employment security
15 department where so required by federal law. When federal law does
16 not apply to the records or information state law shall control.

17 (8) The employment security department may provide information
18 for purposes of statistical analysis and evaluation of the WorkFirst
19 program or any successor state welfare program to the department of
20 social and health services, the office of financial management, and
21 other governmental entities with oversight or evaluation
22 responsibilities for the program in accordance with RCW 43.20A.080.
23 The confidential information provided by the employment security
24 department shall remain the property of the employment security
25 department and may be used by the authorized requesting agencies only
26 for statistical analysis, research, and evaluation purposes as
27 provided in RCW 74.08A.410 and 74.08A.420. The department of social
28 and health services, the office of financial management, or other
29 governmental entities with oversight or evaluation responsibilities
30 for the program are not required to comply with subsection (1)(c) of
31 this section, but the requirements of the remainder of subsection (1)
32 of this section and applicable federal laws and regulations must be
33 satisfied. The confidential information used for evaluation and
34 analysis of welfare reform supplied to the authorized requesting
35 entities with regard to the WorkFirst program or any successor state
36 welfare program are exempt from public inspection and copying under
37 chapter 42.56 RCW.

38 (9) ~~((The disclosure of any records or information by a
39 governmental agency which has obtained the records or information
40 under this section is prohibited unless the disclosure is (a)~~

1 ~~directly connected to the official purpose for which the records or~~
2 ~~information were obtained or (b) to another governmental agency which~~
3 ~~would be permitted to obtain the records or information under~~
4 ~~subsection (4) or (5) of this section.~~

5 ~~(10))~~ In conducting periodic salary or fringe benefit studies
6 pursuant to law, the office of financial management shall have access
7 to records of the employment security department as may be required
8 for such studies. For such purposes, the requirements of subsection
9 (1)(c) of this section need not apply.

10 ~~((11))~~ (10) (a) To promote the reemployment of job seekers, the
11 commissioner may enter into data-sharing contracts with partners of
12 the one-stop ~~((career development))~~ system established by P.L.
13 113-128 or its successor and identified as signatories of local
14 memoranda of understanding. The contracts shall provide for the
15 transfer of data only to the extent that the transfer is necessary
16 for the efficient provisions of workforce programs, including but not
17 limited to public labor exchange, unemployment insurance, worker
18 training and retraining, vocational rehabilitation, vocational
19 education, adult education, transition from public assistance, and
20 support services. The transfer of information under contracts with
21 one-stop partners is exempt from subsection (1)(c) of this section.

22 (b) An individual who applies for services from the employment
23 security department and whose information will be shared under (a) of
24 this subsection ~~((11))~~ must be notified that his or her private and
25 confidential information in the employment security department's
26 records will be shared among the one-stop partners to facilitate the
27 delivery of one-stop services to the individual. The notice must
28 advise the individual that he or she may request that private and
29 confidential information not be shared among the one-stop partners
30 and the employment security department must honor the request. In
31 addition, the notice must:

32 (i) Advise the individual that if he or she requests that private
33 and confidential information not be shared among one-stop partners,
34 the request will in no way affect eligibility for services;

35 (ii) Describe the nature of the information to be shared, the
36 general use of the information by one-stop partner representatives,
37 and among whom the information will be shared;

38 (iii) Inform the individual that shared information will be used
39 only for the purpose of delivering one-stop services and that further

1 disclosure of the information is prohibited under contract and is not
2 subject to disclosure under chapter 42.56 RCW; and

3 (iv) Be provided in English and an alternative language selected
4 by the one-stop center or job service center as appropriate for the
5 community where the center is located.

6 If the notice is provided in-person, the individual who does not
7 want private and confidential information shared among the one-stop
8 partners must immediately advise the one-stop partner representative
9 of that decision. The notice must be provided to an individual who
10 applies for services telephonically, electronically, or by mail, in a
11 suitable format and within a reasonable time after applying for
12 services, which shall be no later than ten working days from the
13 employment security department's receipt of the application for
14 services. (~~(A one-stop representative must be available to answer~~
15 ~~specific questions regarding)~~) Information describing the nature,
16 extent, and purpose for which the information may be shared must be
17 available upon request.

18 (~~(12)~~) (11) To facilitate improved operation and evaluation of
19 state programs, the commissioner may enter into data-sharing
20 contracts with other state and local governmental agencies and
21 federally recognized Indian tribes as defined in Title 26 U.S.C. Sec.
22 3306(u) of the federal unemployment tax act, and by extension their
23 agents, only to the extent that such transfer is necessary for the
24 efficient operation or evaluation of outcomes for those programs. The
25 transfer of information by contract under this subsection is exempt
26 from subsection (1)(c) of this section.

27 (~~(13) The misuse or unauthorized release of records or~~
28 ~~information by any person or organization to which access is~~
29 ~~permitted by this chapter subjects the person or organization to a~~
30 ~~civil penalty of five thousand dollars and other applicable sanctions~~
31 ~~under state and federal law. Suit to enforce this section shall be~~
32 ~~brought by the attorney general and the amount of any penalties~~
33 ~~collected shall be paid into the employment security department~~
34 ~~administrative contingency fund. The attorney general may recover~~
35 ~~reasonable attorneys' fees for any action brought to enforce this~~
36 ~~section.)~~)

37 **Sec. 5.** RCW 50.13.070 and 1977 ex.s. c 153 s 7 are each amended
38 to read as follows:

1 Information or records deemed private and confidential under this
2 chapter shall be available to parties to judicial or formal
3 administrative proceedings only upon a written finding by the
4 presiding officer that the need for the information or records in the
5 proceeding outweighs any reasons for the privacy and confidentiality
6 of the information or records. Information or records deemed private
7 and confidential under this chapter shall not be available in
8 discovery proceedings unless the court in which the action has been
9 filed has made the finding specified above. A judicial or
10 administrative subpoena directed to the employment security
11 department must contain this finding. A subpoena for records or
12 information (~~held by the department may be directed to and served~~
13 ~~upon any employee of the department, but the department may specify~~
14 ~~by rule which employee shall produce the records or information in~~
15 ~~compliance with the subpoena)) under this section must be submitted
16 in a manner prescribed by the employment security department. The
17 employment security department may recover costs of responding to
18 subpoenas, consistent with 20 C.F.R. Sec. 603.8 (2012), for
19 proceedings where the employment security department is not a party.~~

20 **Sec. 6.** RCW 50.13.080 and 2005 c 274 s 323 are each amended to
21 read as follows:

22 (1) The employment security department shall have the right to
23 disclose information or records deemed private and confidential under
24 this chapter to any private person or organization when such
25 disclosure is necessary to permit private contracting parties to
26 assist in the operation and management of the employment security
27 department in instances where certain employment security
28 departmental functions may be delegated to private parties to
29 increase the employment security department's efficiency or quality
30 of service to the public. The private persons or organizations shall
31 use the information or records solely for the purpose for which the
32 information was disclosed and shall be bound by the same rules of
33 privacy and confidentiality as employment security department
34 employees.

35 (2) Nothing in this section shall be construed as limiting or
36 restricting the effect of RCW 42.56.070(~~(+9))~~) (8).

37 (~~(3) The misuse or unauthorized release of records or~~
38 ~~information deemed private and confidential under this chapter by any~~
39 ~~private person or organization to which access is permitted by this~~

1 ~~section shall subject the person or organization to a civil penalty~~
2 ~~of five thousand dollars and other applicable sanctions under state~~
3 ~~and federal law. Suit to enforce this section shall be brought by the~~
4 ~~attorney general and the amount of any penalties collected shall be~~
5 ~~paid into the employment security department administrative~~
6 ~~contingency fund. The attorney general may recover reasonable~~
7 ~~attorneys' fees for any action brought to enforce this section.)~~

8 **Sec. 7.** RCW 50.13.100 and 1977 ex.s. c 153 s 10 are each amended
9 to read as follows:

10 Nothing in this chapter shall prevent the disclosure of
11 information or records deemed private and confidential under this
12 chapter if all details identifying an individual or employing unit
13 are deleted so long as the information or records cannot be
14 foreseeably combined with other publicly available information to
15 reveal the identity of an individual or employing unit or the
16 individual or employing unit consents to the disclosure in a manner
17 prescribed by the employment security department.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 50.13
19 RCW to read as follows:

20 (1) All private persons, governmental agencies, and organizations
21 authorized to receive information from the employment security
22 department under this chapter have an affirmative obligation to take
23 all reasonable actions necessary that are designed to prevent the
24 disclosure of confidential information.

25 (2) The disclosure of any records or information by a private
26 person, governmental agency, or organization that obtained the
27 records or information from the employment security department under
28 this chapter is prohibited unless expressly permitted by this
29 chapter.

30 (3) If misuse or an unauthorized disclosure of confidential
31 records or information occurs, all parties aware of the violation
32 must inform the employment security department immediately and take
33 all reasonably available actions to rectify the disclosure to the
34 employment security department's standards.

35 (4) The misuse or unauthorized disclosure of records or
36 information deemed private and confidential under this chapter by any
37 private person, governmental agency, or organization to which access
38 is permitted by this chapter shall subject the person, governmental

1 agency, or organization to a civil penalty of up to twenty thousand
2 dollars in 2018 and annually adjusted by the employment security
3 department on the first calendar day of each year based on changes in
4 the United States consumer price index for all urban consumers. Other
5 applicable sanctions under state and federal law also apply. The
6 amount of any penalties collected shall be paid into the employment
7 security department administrative contingency fund. The attorney
8 general may recover reasonable attorneys' fees for any action brought
9 to enforce this section.

10 (5) Any redisclosure of information obtained under this chapter
11 by a private person, governmental agency, or organization must be
12 expressly permitted by the employment security department prior to
13 redisclosure. Failure to obtain prior approval by the employment
14 security department could subject the private person, governmental
15 agency, or organization to the penalties described in subsection (4)
16 of this section.

17 (6) State and local governmental agencies and federally
18 recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u)
19 of the federal unemployment tax act are exempt from the penalties
20 described in subsection (4) of this section if the redisclosure is
21 necessary for the state, local, or tribal government to conduct a
22 criminal prosecution.

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 50.13
24 RCW to read as follows:

25 (1) The employment security department shall designate an agency
26 privacy officer to oversee the administration of this chapter and
27 chapter 50A.--- RCW (the new chapter created in section . . . ,
28 chapter . . . (Z-0085/19), Laws of 2019. In coordination with the
29 state office of privacy and data protection, the agency privacy
30 officer must:

31 (a) Develop an agency personal information minimization policy to
32 reduce the use and retention of personal information wherever
33 possible;

34 (b) Create a work plan that includes the estimated costs of
35 execution for the following:

36 (i) An inventory of all personal information prepared, owned,
37 used, or retained by the employment security department, that would
38 include the specific type of information, the purpose for its

1 collection, and the extent to which the information is protected from
2 unauthorized access; and

3 (ii) A map of the physical or digital location of all personal
4 information collected by the employment security department, indexed
5 to the inventory created in (b) (i) of this subsection; and

6 (c) Report the work plan created under (b) of this subsection to
7 the state office of privacy and data protection annually.

8 (2) Any inventory or data map records created under subsection
9 (1)(b) of this section that reveal the location of personal
10 information or the extent to which it is protected may not be
11 disclosed under the public records act, chapter 42.56 RCW.

12 (3) On December 1st of each odd-numbered year, the employment
13 security department must report to the governor and the legislature
14 on the implementation and maintenance of this section, including best
15 practices and recommendations for developing and implementing the
16 employment security department's policy and plan under this section.

17 (4) For purposes of this section, "personal information" means
18 any information obtained by the employment security department deemed
19 private and confidential under this chapter and chapter 50A.--- RCW
20 (the new chapter created in section . . . , chapter . . . (Z-0085/19),
21 Laws of 2019.

22 **Sec. 10.** RCW 42.56.410 and 2005 c 274 s 421 are each amended to
23 read as follows:

24 The following information related to employment security is
25 exempt from disclosure under this chapter:

26 (1) Records maintained by the employment security department and
27 subject to chapter 50.13 RCW if provided to another individual or
28 organization for operational, research, or evaluation purposes are
29 exempt from disclosure under this chapter; and

30 (2) Any inventory or data map records created under section
31 9(1)(b) of this act that reveal the location of personal information
32 or the extent to which it is protected.

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 50.13
34 RCW to read as follows:

35 Except for section 9 of this act, the provisions of this chapter
36 do not apply to information obtained by the employment security
37 department under Title 50A RCW."

ADOPTED 02/27/2019

1 On page 1, line 2 of the title, after "data;" strike the
2 remainder of the title and insert "amending RCW 50.13.020, 50.13.030,
3 50.13.040, 50.13.060, 50.13.070, 50.13.080, 50.13.100, and 42.56.410;
4 adding new sections to chapter 50.13 RCW; and prescribing penalties."

EFFECT: Modifies the obligation to take action to prevent disclosure of confidential information received from the employment security department to all reasonable action necessary that are designed to prevent the disclosure. Exempts any inventory or data map records that reveal the location of personal information or the extent to which it is protected from public disclosure.

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