

SENATE BILL REPORT

ESB 5439

As Passed Senate, February 27, 2019

Title: An act relating to confidentiality of employment security department records and data.

Brief Description: Concerning confidentiality of employment security department records and data.

Sponsors: Senators Keiser, King, Kuderer, Conway, McCoy, Saldaña and Wellman; by request of Employment Security Department.

Brief History:

Committee Activity: Labor & Commerce: 1/24/19, 1/28/19 [DP, w/oRec].

Floor Activity:

Passed Senate: 2/27/19, 49-0.

Brief Summary of Engrossed Bill

- Modifies provisions for disclosing confidential records and information held by the Employment Security Department (ESD) to certain third parties.
- Makes changes to how information is disclosed to other governmental agencies.
- Requires ESD to designate a privacy officer to develop an agency personal information minimization policy to reduce the use and retention of personal information; including inventorying the information and creating a map for the location of the information.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Susan Jones (786-7404)

Background: Any information or records concerning an individual or employing unit obtained by ESD pursuant to the administration of unemployment insurance are generally private and confidential.

If information provided to ESD by another governmental agency is held private and confidential by state or federal laws, ESD may not release such information. Information provided to ESD by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between ESD and the other governmental agency. ESD may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information. Persons requesting disclosure of information held by ESD must request such disclosure from the agency providing the information to ESD.

There are a variety of laws regarding access to information held at ESD by:

- certain individuals;
- governmental agencies;
- parties to judicial and administrative proceedings; and
- contractors assisting ESD in its operations and management.

Summary of Engrossed Bill: Third Party Disclosure. ESD may disclose records and information deemed confidential to a third party acting on behalf of an individual or employing unit that would otherwise be eligible to receive records when ESD receives a release from the individual, the employing unit, or the third party. The release must be signed and include a statement, which must include the specific purpose for which the information is sought and that the information obtained under the release will only be used for that purpose.

Governmental Agencies and Tribes Access to Information. The term governmental agencies is clarified to include state and local governmental agencies and certain federally recognized Indian tribes. Governmental agencies must meet additional criteria to obtain information, such as submitting an application indicating the need for the information.

Affirmative Action Required. New provisions are added related to the information received from ESD. All private persons, governmental agencies, and organizations authorized to receive information from ESD have an affirmative obligation to take all reasonable actions necessary that are designed to prevent the disclosure of confidential information. Disclosure of these records or information is prohibited unless expressly permitted by law.

Misuse or Unauthorized Disclosure. If misuse or an unauthorized disclosure of confidential records or information occurs, all parties aware of the violation must inform ESD immediately and take all reasonably available actions to rectify the disclosure to ESD's standards. The misuse or unauthorized disclosure, or redisclosure without express ESD permission, of records or information deemed private and confidential is subject to a civil penalty of up to \$20,000 beginning in 2018 and adjusted for inflation. The penalties must be paid into ESD's administrative contingency fund. The attorney general may recover

reasonable attorneys' fees for any action brought to enforce this section. State and local governmental agencies and certain federally recognized Indian tribes are exempt from the penalties if the redisclosure is necessary for the state, local, or tribal government to conduct a criminal prosecution.

ESD Privacy Officer. ESD must designate an agency privacy officer. In coordination with the state Office of Privacy and Data Protection, the ESD privacy officer must:

- develop an agency personal information minimization policy to reduce the use and retention of personal information wherever possible;
- create a work plan that includes the estimated costs of execution for (1) an inventory of all personal information prepared, owned, used, or retained by ESD, and (2) a map of the location of all personal information collected; and
- report the work plan to the state Office of Privacy and Data Protection annually.

Any inventory or data map records are exempt from disclosure under the Public Records Act. The following information related to employment security is also exempt from disclosure under the Public Records Act:

- records maintained by ESD if provided to another individual or organization for operational, research, or evaluation purposes; and
- any inventory or data map records that reveal the location of personal information or the extent to which it is protected.

ESD must report to the Governor and the Legislature on the implementation and maintenance of the new provisions, including best practices and recommendations.

Provisions are deleted that:

- state the Legislature may exercise its authority under the laws regarding legislative inquiry if ESD does not make certain information available to the Legislature; and
- subject a person who misuses information held to be private and confidential under state or federal laws to certain sanctions.

Other technical changes are made.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is an agency request bill. It makes a number of technical corrections. The state laws governing how ESD treats clients' private and confidential information were written in the 1970s. This bill attempts to update and modernize those laws. This bill moves the concept of paper being passed around rooms into the 21st century where we are sharing data electronically. Everyone is concerned about confidentiality across government and business.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Nick Streuli, Legislative Director, Employment Security Department.

Persons Signed In To Testify But Not Testifying: No one.