

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5439

66th Legislature
2019 Regular Session

Passed by the Senate February 27, 2019
Yeas 49 Nays 0

President of the Senate

Passed by the House April 10, 2019
Yeas 94 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5439** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5439

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

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

1 AN ACT Relating to confidentiality of employment security
2 department records and data; 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.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

19 (2) Requested by a county clerk for the purposes of RCW
20 9.94A.760.

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

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

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

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

12 (1) An individual shall have access to all records and
13 information concerning that individual held by the employment
14 security department, unless the information is exempt from disclosure
15 under RCW 42.56.410.

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

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

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

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

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

29 (5) The employment security department may disclose records and
30 information deemed confidential under this chapter to a third party
31 acting on behalf of an individual or employing unit that would
32 otherwise be eligible to receive records under subsections (1)
33 through (4) of this section when the employment security department
34 receives a release from the individual, the employing unit, or the
35 third party. The release must be signed and include a statement:

36 (a) Specifically identifying the information that is to be
37 disclosed;

1 (b) That state government files will be accessed to obtain the
2 information;

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

6 (d) Indicating all the parties who may receive the information
7 disclosed.

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

10 (1) Unless otherwise required by federal law, only state and
11 local governmental agencies (~~(, including law enforcement agencies,~~
12 ~~prosecuting agencies, and the executive branch, whether state, local,~~
13 ~~or federal shall)) and federally recognized Indian tribes as defined
14 in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act
15 may have access to information or records deemed private and
16 confidential under this chapter if the information or records are
17 needed by the agency for official purposes and:~~

18 (a) The agency submits an application in (~~(writing to))~~ a manner
19 specified by the employment security department for the records or
20 information containing a statement of the official purposes for which
21 the information or records are needed and specific identification of
22 the records or information sought from the employment security
23 department; and

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

28 (c) The agency requesting access has served a copy of the
29 application for records or information on the individual or employing
30 unit whose records or information are sought and has provided the
31 employment security department with proof of service. Service shall
32 be made in a manner which conforms to the civil rules for superior
33 court. The requesting agency shall include with the copy of the
34 application a statement to the effect that the individual or
35 employing unit may contact the public records officer of the
36 employment security department to state any objections to the release
37 of the records or information. The employment security department
38 shall not act upon the application of the requesting agency until at
39 least five days after service on the concerned individual or

1 employing unit. The employment security department shall consider any
2 objections raised by the concerned individual or employing unit in
3 deciding whether the requesting agency needs the information or
4 records for official purposes.

5 (2) The requirements of subsection(~~(s)~~) (1) (~~(and (9))~~) of this
6 section shall not apply to the state legislative branch. The state
7 legislature (~~(shall)~~) may have access to information or records
8 deemed private and confidential under this chapter, if the
9 legislature or a legislative committee finds that the information or
10 records are necessary and for official purposes. (~~(If the employment~~
11 ~~security department does not make information or records available as~~
12 ~~provided in this subsection, the legislature may exercise its~~
13 ~~authority granted by chapter 44.16 RCW.)~~)

14 (3) In cases of emergency the governmental agency requesting
15 access shall not be required to formally comply with the provisions
16 of subsection (1) of this section at the time of the request if the
17 procedures required by subsection (1) of this section are complied
18 with by the requesting agency following the receipt of any records or
19 information deemed private and confidential under this chapter. An
20 emergency is defined as a situation in which irreparable harm or
21 damage could occur if records or information are not released
22 immediately.

23 (4) The requirements of subsection (1)(c) of this section shall
24 not apply to state and local governmental agencies and federally
25 recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u)
26 of the federal unemployment tax act where the procedures would
27 frustrate the investigation of possible violations of criminal laws
28 or to the release of employing unit names, addresses, number of
29 employees, and aggregate employer wage data for the purpose of state
30 governmental agencies preparing small business economic impact
31 statements under chapter 19.85 RCW or preparing cost-benefit analyses
32 under RCW 34.05.328(1) (c) and (d). (~~(Information provided by the~~
33 ~~department and held to be private and confidential under state or~~
34 ~~federal laws must not be misused or released to unauthorized parties.~~
35 ~~A person who misuses such information or releases such information to~~
36 ~~unauthorized parties is subject to the sanctions in RCW 50.13.080.)~~)

37 (5) State and local governmental agencies (~~(shall)~~) and federally
38 recognized Indian tribes as defined in Title 26 U.S.C. Sec. 3306(u)
39 of the federal unemployment tax act may have access to certain
40 records or information(~~(, limited to such items as names, addresses,~~

1 ~~social security numbers, and general information about benefit~~
2 ~~entitlement or employer information possessed by the department,))~~
3 deemed private and confidential under this chapter for comparison
4 purposes with records or information possessed by the requesting
5 agency to detect improper or fraudulent claims, ~~((or))~~ to determine
6 potential tax liability or employer compliance with registration and
7 licensing requirements, or for reasons otherwise within the discharge
8 of their official duties. In those cases the state or local
9 governmental agency or federally recognized Indian tribe as defined
10 in Title 26 U.S.C. Sec. 3306(u) of the federal unemployment tax act
11 shall not be required to comply with subsection (1)(c) of this
12 section, but the requirements of ~~((the remainder of))~~ subsection (1)
13 (a) and (b) of this section must be satisfied.

14 (6) Governmental agencies may have access to certain records and
15 information, limited to employer information possessed by the
16 employment security department for purposes authorized in chapter
17 50.38 RCW. Access to these records and information is limited to only
18 those individuals conducting authorized statistical analysis,
19 research, and evaluation studies. Only in cases consistent with the
20 purposes of chapter 50.38 RCW are governmental agencies not required
21 to comply with subsection (1)(c) of this section, but the
22 requirements of ~~((the remainder of))~~ subsection (1)(a) and (b) of
23 this section must be satisfied. ~~((Information provided by the~~
24 ~~department and held to be private and confidential under state or~~
25 ~~federal laws shall not be misused or released to unauthorized parties~~
26 ~~subject to the sanctions in RCW 50.13.080.))~~

27 (7) Disclosure to governmental agencies of information or records
28 obtained by the employment security department from the federal
29 government shall be governed by any applicable federal law or any
30 agreement between the federal government and the employment security
31 department where so required by federal law. When federal law does
32 not apply to the records or information state law shall control.

33 (8) The employment security department may provide information
34 for purposes of statistical analysis and evaluation of the WorkFirst
35 program or any successor state welfare program to the department of
36 social and health services, the office of financial management, and
37 other governmental entities with oversight or evaluation
38 responsibilities for the program in accordance with RCW 43.20A.080.
39 The confidential information provided by the employment security
40 department shall remain the property of the employment security

1 department and may be used by the authorized requesting agencies only
2 for statistical analysis, research, and evaluation purposes as
3 provided in RCW 74.08A.410 and 74.08A.420. The department of social
4 and health services, the office of financial management, or other
5 governmental entities with oversight or evaluation responsibilities
6 for the program are not required to comply with subsection (1)(c) of
7 this section, but the requirements of the remainder of subsection (1)
8 of this section and applicable federal laws and regulations must be
9 satisfied. The confidential information used for evaluation and
10 analysis of welfare reform supplied to the authorized requesting
11 entities with regard to the WorkFirst program or any successor state
12 welfare program are exempt from public inspection and copying under
13 chapter 42.56 RCW.

14 ~~(9) ((The disclosure of any records or information by a~~
15 ~~governmental agency which has obtained the records or information~~
16 ~~under this section is prohibited unless the disclosure is (a)~~
17 ~~directly connected to the official purpose for which the records or~~
18 ~~information were obtained or (b) to another governmental agency which~~
19 ~~would be permitted to obtain the records or information under~~
20 ~~subsection (4) or (5) of this section.~~

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

26 ~~((11))~~ (10) (a) To promote the reemployment of job seekers, the
27 commissioner may enter into data-sharing contracts with partners of
28 the one-stop ~~((career development))~~ system established by P.L.
29 113-128 or its successor and identified as signatories of local
30 memoranda of understanding. The contracts shall provide for the
31 transfer of data only to the extent that the transfer is necessary
32 for the efficient provisions of workforce programs, including but not
33 limited to public labor exchange, unemployment insurance, worker
34 training and retraining, vocational rehabilitation, vocational
35 education, adult education, transition from public assistance, and
36 support services. The transfer of information under contracts with
37 one-stop partners is exempt from subsection (1)(c) of this section.

38 (b) An individual who applies for services from the employment
39 security department and whose information will be shared under (a) of
40 this subsection ~~((11))~~ must be notified that his or her private and

1 confidential information in the employment security department's
2 records will be shared among the one-stop partners to facilitate the
3 delivery of one-stop services to the individual. The notice must
4 advise the individual that he or she may request that private and
5 confidential information not be shared among the one-stop partners
6 and the employment security department must honor the request. In
7 addition, the notice must:

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

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

14 (iii) Inform the individual that shared information will be used
15 only for the purpose of delivering one-stop services and that further
16 disclosure of the information is prohibited under contract and is not
17 subject to disclosure under chapter 42.56 RCW; and

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

21 If the notice is provided in-person, the individual who does not
22 want private and confidential information shared among the one-stop
23 partners must immediately advise the one-stop partner representative
24 of that decision. The notice must be provided to an individual who
25 applies for services telephonically, electronically, or by mail, in a
26 suitable format and within a reasonable time after applying for
27 services, which shall be no later than ten working days from the
28 employment security department's receipt of the application for
29 services. (~~(A one-stop representative must be available to answer~~
30 ~~specific questions regarding)~~ Information describing the nature,
31 extent, and purpose for which the information may be shared must be
32 available upon request.

33 (~~(12)~~) (11) To facilitate improved operation and evaluation of
34 state programs, the commissioner may enter into data-sharing
35 contracts with other state and local governmental agencies and
36 federally recognized Indian tribes as defined in Title 26 U.S.C. Sec.
37 3306(u) of the federal unemployment tax act, and by extension their
38 agents, only to the extent that such transfer is necessary for the
39 efficient operation or evaluation of outcomes for those programs. The

1 transfer of information by contract under this subsection is exempt
2 from subsection (1)(c) of this section.

3 ~~((13) The misuse or unauthorized release of records or
4 information by any person or organization to which access is
5 permitted by this chapter subjects the person or organization to a
6 civil penalty of five thousand dollars and other applicable sanctions
7 under state and federal law. Suit to enforce this section shall be
8 brought by the attorney general and the amount of any penalties
9 collected shall be paid into the employment security department
10 administrative contingency fund. The attorney general may recover
11 reasonable attorneys' fees for any action brought to enforce this
12 section.))~~

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

15 Information or records deemed private and confidential under this
16 chapter shall be available to parties to judicial or formal
17 administrative proceedings only upon a written finding by the
18 presiding officer that the need for the information or records in the
19 proceeding outweighs any reasons for the privacy and confidentiality
20 of the information or records. Information or records deemed private
21 and confidential under this chapter shall not be available in
22 discovery proceedings unless the court in which the action has been
23 filed has made the finding specified above. A judicial or
24 administrative subpoena directed to the employment security
25 department must contain this finding. A subpoena for records or
26 information ~~((held by the department may be directed to and served
27 upon any employee of the department, but the department may specify
28 by rule which employee shall produce the records or information in
29 compliance with the subpoena))~~ under this section must be submitted
30 in a manner prescribed by the employment security department. The
31 employment security department may recover costs of responding to
32 subpoenas, consistent with 20 C.F.R. Sec. 603.8 (2012), for
33 proceedings where the employment security department is not a party.

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

36 (1) The employment security department shall have the right to
37 disclose information or records deemed private and confidential under
38 this chapter to any private person or organization when such

1 disclosure is necessary to permit private contracting parties to
2 assist in the operation and management of the employment security
3 department in instances where certain employment security
4 departmental functions may be delegated to private parties to
5 increase the employment security department's efficiency or quality
6 of service to the public. The private persons or organizations shall
7 use the information or records solely for the purpose for which the
8 information was disclosed and shall be bound by the same rules of
9 privacy and confidentiality as employment security department
10 employees.

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

13 (~~(3) The misuse or unauthorized release of records or~~
14 ~~information deemed private and confidential under this chapter by any~~
15 ~~private person or organization to which access is permitted by this~~
16 ~~section shall subject the person or organization to a civil penalty~~
17 ~~of five thousand dollars and other applicable sanctions under state~~
18 ~~and federal law. Suit to enforce this section shall be brought by the~~
19 ~~attorney general and the amount of any penalties collected shall be~~
20 ~~paid into the employment security department administrative~~
21 ~~contingency fund. The attorney general may recover reasonable~~
22 ~~attorneys' fees for any action brought to enforce this section.))~~

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

25 Nothing in this chapter shall prevent the disclosure of
26 information or records deemed private and confidential under this
27 chapter if all details identifying an individual or employing unit
28 are deleted so long as the information or records cannot be
29 foreseeably combined with other publicly available information to
30 reveal the identity of an individual or employing unit or the
31 individual or employing unit consents to the disclosure in a manner
32 prescribed by the employment security department.

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

35 (1) All private persons, governmental agencies, and organizations
36 authorized to receive information from the employment security
37 department under this chapter have an affirmative obligation to take

1 all reasonable actions necessary that are designed to prevent the
2 disclosure of confidential information.

3 (2) The disclosure of any records or information by a private
4 person, governmental agency, or organization that obtained the
5 records or information from the employment security department under
6 this chapter is prohibited unless expressly permitted by this
7 chapter.

8 (3) If misuse or an unauthorized disclosure of confidential
9 records or information occurs, all parties aware of the violation
10 must inform the employment security department immediately and take
11 all reasonably available actions to rectify the disclosure to the
12 employment security department's standards.

13 (4) The misuse or unauthorized disclosure of records or
14 information deemed private and confidential under this chapter by any
15 private person, governmental agency, or organization to which access
16 is permitted by this chapter shall subject the person, governmental
17 agency, or organization to a civil penalty of up to twenty thousand
18 dollars in 2018 and annually adjusted by the employment security
19 department on the first calendar day of each year based on changes in
20 the United States consumer price index for all urban consumers. Other
21 applicable sanctions under state and federal law also apply. The
22 amount of any penalties collected shall be paid into the employment
23 security department administrative contingency fund. The attorney
24 general may recover reasonable attorneys' fees for any action brought
25 to enforce this section.

26 (5) Any redisclosure of information obtained under this chapter
27 by a private person, governmental agency, or organization must be
28 expressly permitted by the employment security department prior to
29 redisclosure. Failure to obtain prior approval by the employment
30 security department could subject the private person, governmental
31 agency, or organization to the penalties described in subsection (4)
32 of this section.

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

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

3 (1) The employment security department shall designate an agency
4 privacy officer to oversee the administration of this chapter and
5 chapter 50A.--- RCW (the new chapter created in section . . . ,
6 chapter . . . (Z-0085/19), Laws of 2019. In coordination with the
7 state office of privacy and data protection, the agency privacy
8 officer must:

9 (a) Develop an agency personal information minimization policy to
10 reduce the use and retention of personal information wherever
11 possible;

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

14 (i) An inventory of all personal information prepared, owned,
15 used, or retained by the employment security department, that would
16 include the specific type of information, the purpose for its
17 collection, and the extent to which the information is protected from
18 unauthorized access; and

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

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

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

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

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

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

1 The following information related to employment security is
2 exempt from disclosure under this chapter:

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

7 (2) Any inventory or data map records created under section
8 9(1)(b) of this act that reveal the location of personal information
9 or the extent to which it is protected.

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

12 Except for section 9 of this act, the provisions of this chapter
13 do not apply to information obtained by the employment security
14 department under Title 50A RCW.

--- END ---