

**CRIMINAL BACKGROUND CHECKS BY  
POLITICAL SUBDIVISIONS OPERATING  
WATER SYSTEMS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Carlene M. Walker**

**This act enacts provisions authorizing political subdivisions of the state that operate a public water system to require prospective and current employees and contractors and those seeking access to public water system facilities to submit to a criminal background check. The act provides for notice to a person whose employment is denied or terminated and for review of the denial or termination. The act also makes conforming and technical changes and provides an effective date.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**53-10-104**, as last amended by Chapter 316, Laws of Utah 2000

**63-2-302 (Effective 07/01/03)**, as last amended by Chapters 63 and 191, Laws of Utah 2002

**63-2-302 (Superseded 07/01/03)**, as last amended by Chapter 63, Laws of Utah 2002

ENACTS:

**11-39-101**, Utah Code Annotated 1953

**11-39-102**, Utah Code Annotated 1953

**11-39-103**, Utah Code Annotated 1953

**11-39-104**, Utah Code Annotated 1953

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

Section 1. Section **11-39-101** is enacted to read:

**CHAPTER 39. CRIMINAL BACKGROUND CHECKS BY POLITICAL  
SUBDIVISIONS OPERATING WATER SYSTEMS**



28 **11-39-101. Definitions.**29 As used in this chapter:

30 (1) "Applicant" means a person who seeks employment with a public water utility,  
 31 either as an employee or as an independent contractor **h** , AND WHO, AFTER EMPLOYMENT, WOULD,  
 31a **IN THE JUDGMENT OF THE PUBLIC WATER UTILITY, BE IN A POSITION TO AFFECT THE SAFETY OR**  
 31b **SECURITY OF THE PUBLIC OWNED TREATMENT WORKS OR PUBLIC WATER SYSTEM OR TO**  
 31c **AFFECT THE SAFETY OR WELL BEING OF PATRONS OF THE PUBLIC WATER UTILITY** **h** .

32 (2) "Division" means the Criminal Investigation and Technical Services Division of the  
 33 Department of Public Safety, established in Section 53-10-103.

34 (3) "Independent contractor":

35 (a) means an engineer, contractor, consultant, or supplier who designs, constructs,  
 36 operates, maintains, repairs, replaces, or provides water treatment or conveyance facilities or  
 37 equipment, or related control or security facilities or equipment, to the public water utility; and

38 (b) includes the employees and agents of the engineer, contractor, consultant, or  
 39 supplier.

40 (4) "Person seeking access" means a person who seeks access to a public water utility's  
 41 public water system or public owned treatment works **h** AND WHO, AFTER OBTAINING ACCESS,  
 41a **WOULD, IN THE JUDGMENT OF THE PUBLIC WATER UTILITY, BE IN A POSITION TO AFFECT THE**  
 41b **SAFETY OR SECURITY OF THE PUBLIC OWNED TREATMENT WORKS OR PUBLIC WATER SYSTEM**  
 41c **OR TO AFFECT THE SAFETY OR WELL BEING OF PATRONS OF THE PUBLIC WATER UTILITY** **h** .

42 (5) "Public owned treatment works" has the same meaning as defined in Section  
 43 19-5-102.

44 (6) "Public water system" has the same meaning as defined in Section 19-4-102.

45 (7) "Public water utility" means a county, city, town, independent special district under  
 46 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,  
 47 Local Districts, or other political subdivision of the state that operates public owned treatment  
 48 works or a public water system.

49 Section 2. Section **11-39-102** is enacted to read:

50 **11-39-102. Criminal background check authorized -- Written notice required.**51 (1) A public water utility may:

52 (a) require an applicant to submit to a criminal background check as a condition of  
 53 employment;

54 (b) periodically require existing employees of the public water utility to submit to a  
 55 criminal background check **h** IF, IN THE JUDGMENT OF THE PUBLIC WATER UTILITY, THE **h**

55a h EMPLOYEE IS IN A POSITION TO AFFECT THE SAFETY OR SECURITY OF THE PUBLIC  
55b OWNED TREATMENT WORKS OR PUBLIC WATER SYSTEM OR TO AFFECT THE SAFETY OR WELL  
55c BEING OF PATRONS OF THE PUBLIC WATER UTILITY h ; and  
56 (c) require a person seeking access to submit to a criminal background check as a  
57 condition of acquiring access.  
58 (2) (a) Each applicant, person seeking access, and existing employee h DESCRIBED IN  
58a SUBSECTION (1)(b) h shall, if required

59 by the public water utility:

60 (i) submit a fingerprint card in a form acceptable to the division; and

61 (ii) consent to a fingerprint background check by:

62 (A) the Utah Bureau of Criminal Identification; and

63 (B) the Federal Bureau of Investigation.

64 (b) If requested by a public water utility, the division shall request the Department of  
 65 Public Safety to complete a Federal Bureau of Investigation criminal background check for  
 66 each applicant, person seeking access, or existing employee through a national criminal history  
 67 system.

68 (c) (i) A public water utility may make an applicant's employment with the public  
 69 water utility or the access of a person seeking access conditional pending completion of a  
 70 criminal background check under this section.

71 (ii) If a criminal background check discloses that an applicant or a person seeking  
 72 access failed to disclose accurately a criminal history, the public water utility may deny or, if  
 73 conditionally given, immediately terminate the applicant's employment or the person's access.

74 (iii) If an applicant or person seeking access accurately disclosed the relevant criminal  
 75 history and the criminal background check discloses that the applicant or person seeking access  
 76 has been convicted of a crime that indicates a potential risk for the safety of the public water  
 77 utility's public water system or public owned treatment works or for the safety or well being of  
 78 patrons of the public water utility, the public water utility may deny or, if conditionally given,  
 79 immediately terminate the applicant's employment or the person's access.

80 (3) Each public water utility that requests a criminal background check under

81 Subsection (1) shall **h** PREPARE CRITERIA FOR WHICH CRIMINAL ACTIVITY WILL PRECLUDE

81a **EMPLOYMENT AND SHALL **h** provide written notice to the person who is the subject of the criminal**  
 82 background check that the background check has been requested.

83 Section 3. Section **11-39-103** is enacted to read:

84 **11-39-103. Duties of the Criminal Investigation and Technical Services Division --**  
 85 **Costs of separate file and background check.**

86 (1) If a public water utility requests the division to conduct a criminal background  
 87 check, the division shall:

88 (a) release to the public water utility the full record of criminal convictions for the  
 89 person who is the subject of the background check;

90 (b) if requested by the public water utility, seek additional information from regional or  
91 national criminal data files in conducting the criminal background check;

92 (c) maintain a separate file of fingerprints submitted under Section 11-39-102; and

93 (d) notify the requesting public water utility when a new entry is made against a person  
94 whose fingerprints are held in the file.

95 (2) (a) Each public water utility requesting a criminal background check shall pay the  
96 cost of maintaining the separate file under Subsection (1) from fees charged to those whose  
97 fingerprints are submitted to the division.

98 (b) Each public water utility requesting the division to conduct a criminal background  
99 check shall pay the cost of the background check, and the monies collected shall be credited to  
100 the division to offset its expenses.

101 Section 4. Section **11-39-104** is enacted to read:

102 **11-39-104. Written notice to person whose employment is denied or terminated --**  
103 **Right to respond and seek review.**

104 If a public water utility denies or terminates the employment of a person because of  
105 information obtained through a criminal background check under this chapter, the public water  
106 utility shall:

107 (1) notify the person in writing of the reasons for the denial or termination; and

108 (2) give the person an opportunity to respond to the reasons and to seek review of the  
109 denial or termination through administrative procedures established by the public water utility.

110 Section 5. Section **53-10-104** is amended to read:

111 **53-10-104. Division duties.**

112 The division shall:

113 (1) provide and coordinate the delivery of support services to law enforcement  
114 agencies;

115 (2) maintain and provide access to criminal records for use by law enforcement  
116 agencies;

117 (3) publish law enforcement and statistical data;

118 (4) maintain dispatch and communications services for public safety communications  
119 centers and provide emergency medical, fire suppression, highway maintenance, public works,  
120 and law enforcement communications for municipal, county, state, and federal agencies;

121 (5) analyze evidence from crime scenes and crime-related incidents for criminal  
122 prosecution;

123 (6) provide criminalistic laboratory services to federal, state, and local law enforcement  
124 agencies, prosecuting attorneys' and agencies, and public defenders, with the exception of those  
125 services provided by the state medical examiner in accordance with Title 26, Chapter 4, Utah  
126 Medical Examiner Act;

127 (7) establish satellite laboratories as necessary to provide criminalistic services;

128 (8) safeguard the public through licensing and regulation of activities that impact  
129 public safety, including concealed weapons, emergency vehicles, and private investigators;

130 (9) provide investigative assistance to law enforcement and other government agencies;

131 (10) collect and provide intelligence information to criminal justice agencies;

132 (11) investigate crimes that jeopardize the safety of the citizens, as well as the interests,  
133 of the state;

134 (12) regulate and investigate laws pertaining to the sale and distribution of liquor;

135 (13) make rules to implement this chapter; [~~and~~]

136 (14) perform the functions specified in this chapter[-]; and

137 (15) comply with the requirements of Section 11-39-103.

138 Section 6. Section **63-2-302 (Effective 07/01/03)** is amended to read:

139 **63-2-302 (Effective 07/01/03). Private records.**

140 (1) The following records are private:

141 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
142 social services, welfare benefits, or the determination of benefit levels;

143 (b) records containing data on individuals describing medical history, diagnosis,  
144 condition, treatment, evaluation, or similar medical data;

145 (c) records of publicly funded libraries that when examined alone or with other records  
146 identify a patron;

147 (d) records received or generated for a Senate or House Ethics Committee concerning  
148 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the  
149 meeting, if the ethics committee meeting was closed to the public;

150 (e) records received or generated for a Senate confirmation committee concerning  
151 character, professional competence, or physical or mental health of an individual:

152 (i) if prior to the meeting, the chair of the committee determines release of the records:

153 (A) reasonably could be expected to interfere with the investigation undertaken by the  
154 committee; or

155 (B) would create a danger of depriving a person of a right to a fair proceeding or  
156 impartial hearing;

157 (ii) after the meeting, if the meeting was closed to the public;

158 (f) employment records concerning a current or former employee of, or applicant for  
159 employment with, a governmental entity that would disclose that individual's home address,  
160 home telephone number, Social Security number, insurance coverage, marital status, or payroll  
161 deductions;

162 (g) records or parts of records under Section 63-2-302.5 that a current or former  
163 employee identifies as private according to the requirements of that section;

164 (h) that part of a record indicating a person's Social Security number if provided under  
165 Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

166 (i) that part of a voter registration record identifying a voter's driver license or  
167 identification card number, Social Security number, or last four digits of the Social Security  
168 number; [~~and~~]

169 (j) a record that:

170 (i) contains information about an individual;

171 (ii) is voluntarily provided by the individual; and

172 (iii) goes into an electronic database that:

173 (A) is designated by and administered under the authority of the Chief Information  
174 Officer; and

175 (B) acts as a repository of information about the individual that can be electronically  
176 retrieved and used to facilitate the individual's online interaction with a state agency[-]; and

177 (k) information obtained through a criminal background check under Title 11, Chapter  
178 39, Criminal Background Checks by Political Subdivisions Operating Water Systems.

179 (2) The following records are private if properly classified by a governmental entity:

180 (a) records concerning a current or former employee of, or applicant for employment  
181 with a governmental entity, including performance evaluations and personal status information  
182 such as race, religion, or disabilities, but not including records that are public under Subsection

183 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection [~~63-2-302~~](1)(b);  
184 (b) records describing an individual's finances, except that the following are public:  
185 (i) records described in Subsection 63-2-301(1);  
186 (ii) information provided to the governmental entity for the purpose of complying with  
187 a financial assurance requirement; or  
188 (iii) records that must be disclosed in accordance with another statute;  
189 (c) records of independent state agencies if the disclosure of those records would  
190 conflict with the fiduciary obligations of the agency;  
191 (d) other records containing data on individuals the disclosure of which constitutes a  
192 clearly unwarranted invasion of personal privacy; and  
193 (e) records provided by the United States or by a government entity outside the state  
194 that are given with the requirement that the records be managed as private records, if the  
195 providing entity states in writing that the record would not be subject to public disclosure if  
196 retained by it.  
197 (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
198 records, statements, history, diagnosis, condition, treatment, and evaluation.  
199 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
200 doctors, or affiliated entities are not private records or controlled records under Section  
201 63-2-303 when the records are sought:  
202 (i) in connection with any legal or administrative proceeding in which the patient's  
203 physical, mental, or emotional condition is an element of any claim or defense; or  
204 (ii) after a patient's death, in any legal or administrative proceeding in which any party  
205 relies upon the condition as an element of the claim or defense.  
206 (c) Medical records are subject to production in a legal or administrative proceeding  
207 according to state or federal statutes or rules of procedure and evidence as if the medical  
208 records were in the possession of a nongovernmental medical care provider.  
209 Section 7. Section **63-2-302 (Superseded 07/01/03)** is amended to read:  
210 **63-2-302 (Superseded 07/01/03). Private records.**  
211 (1) The following records are private:  
212 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
213 social services, welfare benefits, or the determination of benefit levels;



- 214 (b) records containing data on individuals describing medical history, diagnosis,  
215 condition, treatment, evaluation, or similar medical data;
- 216 (c) records of publicly funded libraries that when examined alone or with other records  
217 identify a patron;
- 218 (d) records received or generated for a Senate or House Ethics Committee concerning  
219 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the  
220 meeting, if the ethics committee meeting was closed to the public;
- 221 (e) records received or generated for a Senate confirmation committee concerning  
222 character, professional competence, or physical or mental health of an individual:
- 223 (i) if prior to the meeting, the chair of the committee determines release of the records:
- 224 (A) reasonably could be expected to interfere with the investigation undertaken by the  
225 committee; or
- 226 (B) would create a danger of depriving a person of a right to a fair proceeding or  
227 impartial hearing; and
- 228 (ii) after the meeting, if the meeting was closed to the public;
- 229 (f) records concerning a current or former employee of, or applicant for employment  
230 with, a governmental entity that would disclose that individual's home address, home telephone  
231 number, Social Security number, insurance coverage, marital status, or payroll deductions;
- 232 (g) that part of a record indicating a person's Social Security number if provided under  
233 Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;
- 234 (h) that part of a voter registration record identifying a voter's driver license or  
235 identification card number, Social Security number, or last four digits of the Social Security  
236 number; [~~and~~]
- 237 (i) a record that:
- 238 (i) contains information about an individual;
- 239 (ii) is voluntarily provided by the individual; and
- 240 (iii) goes into an electronic database that:
- 241 (A) is designated by and administered under the authority of the Chief Information  
242 Officer; and
- 243 (B) acts as a repository of information about the individual that can be electronically  
244 retrieved and used to facilitate the individual's online interaction with a state agency[-]; and

245           (j) information obtained through a criminal background check under Title 11, Chapter  
246 39, Criminal Background Checks by Political Subdivisions Operating Water Systems.

247           (2) The following records are private if properly classified by a governmental entity:

248           (a) records concerning a current or former employee of, or applicant for employment  
249 with a governmental entity, including performance evaluations and personal status information  
250 such as race, religion, or disabilities, but not including records that are public under Subsection  
251 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection [~~63-2-302~~](1)(b);

252           (b) records describing an individual's finances, except that the following are public:

253           (i) records described in Subsection 63-2-301(1);

254           (ii) information provided to the governmental entity for the purpose of complying with  
255 a financial assurance requirement; or

256           (iii) records that must be disclosed in accordance with another statute;

257           (c) records of independent state agencies if the disclosure of those records would  
258 conflict with the fiduciary obligations of the agency;

259           (d) other records containing data on individuals the disclosure of which constitutes a  
260 clearly unwarranted invasion of personal privacy; and

261           (e) records provided by the United States or by a government entity outside the state  
262 that are given with the requirement that the records be managed as private records, if the  
263 providing entity states in writing that the record would not be subject to public disclosure if  
264 retained by it.

265           (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
266 records, statements, history, diagnosis, condition, treatment, and evaluation.

267           (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
268 doctors, or affiliated entities are not private records or controlled records under Section  
269 63-2-303 when the records are sought:

270           (i) in connection with any legal or administrative proceeding in which the patient's  
271 physical, mental, or emotional condition is an element of any claim or defense; or

272           (ii) after a patient's death, in any legal or administrative proceeding in which any party  
273 relies upon the condition as an element of the claim or defense.

274           (c) Medical records are subject to production in a legal or administrative proceeding  
275 according to state or federal statutes or rules of procedure and evidence as if the medical

276 records were in the possession of a nongovernmental medical care provider.

277 Section 8. **Effective date.**

278 This act takes effect May 5, 2003, except that the amendments to Section 63-2-302

279 (Effective 07/01/03) take effect July 1, 2003.

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**Legislative Review Note**

**as of 1-27-03 5:32 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0075**

**Criminal Background Checks by Political Subdivisions**  
**Operating Water Systems**

*03-Feb-03*  
*9:29 AM*

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**State Impact**

Passage of this bill could increase the dedicated credits going to the Bureau of Criminal Investigations. The Bureau would use these dedicated credits to administer the provisions of the bill.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Dedicated Credits Revenue	\$41,700	\$41,700	\$44,000	\$44,000
<b>TOTAL</b>	<b>\$41,700</b>	<b>\$41,700</b>	<b>\$44,000</b>	<b>\$44,000</b>

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**Individual and Business Impact**

Individuals requesting services will be required to pay a \$44 fee per criminal background check.

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**Office of the Legislative Fiscal Analyst**