

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63-2-302 (Superseded 07/01/03), as last amended by Chapter 63, Laws of Utah 2002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

11-39-101. Definitions.

As used in this chapter:

(1) "Applicant" means a person who seeks employment with a public water utility, either as an employee or as an independent contractor, and who, after employment, would, in the judgment of the public water utility, be in a position to affect the safety or security of the public owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility.

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

(3) "Independent contractor":

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

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

(4) "Person seeking access" means a person who seeks access to a public water utility's public water system or public owned treatment works and who, after obtaining access, would, in the judgment of the public water utility, be in a position to affect the safety or security of the public owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility.

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

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

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

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

11-39-102. Criminal background check authorized -- Written notice required.

(1) A public water utility may:

(a) require an applicant to submit to a criminal background check as a condition of

employment;

(b) periodically require existing employees of the public water utility to submit to a criminal background check if, in the judgment of the public water utility, the employee is in a position to affect the safety or security of the public owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility; and

(c) require a person seeking access to submit to a criminal background check as a condition of acquiring access.

(2) (a) Each applicant, person seeking access, and existing employee described in Subsection (1)(b) shall, if required by the public water utility:

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

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

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

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

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

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

immediately terminate the applicant's employment or the person's access.

(3) Each public water utility that requests a criminal background check under Subsection (1) shall prepare criteria for which criminal activity will preclude employment and shall provide written notice to the person who is the subject of the criminal background check that the background check has been requested.

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

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

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

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

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

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

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

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

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

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

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

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

utility shall:

- (1) notify the person in writing of the reasons for the denial or termination; and
- (2) give the person an opportunity to respond to the reasons and to seek review of the denial or termination through administrative procedures established by the public water utility.

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

53-10-104. Division duties.

The division shall:

- (1) provide and coordinate the delivery of support services to law enforcement agencies;
- (2) maintain and provide access to criminal records for use by law enforcement agencies;
- (3) publish law enforcement and statistical data;
- (4) maintain dispatch and communications services for public safety communications centers and provide emergency medical, fire suppression, highway maintenance, public works, and law enforcement communications for municipal, county, state, and federal agencies;
- (5) analyze evidence from crime scenes and crime-related incidents for criminal prosecution;
- (6) provide criminalistic laboratory services to federal, state, and local law enforcement agencies, prosecuting attorneys' and agencies, and public defenders, with the exception of those services provided by the state medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act;
- (7) establish satellite laboratories as necessary to provide criminalistic services;
- (8) safeguard the public through licensing and regulation of activities that impact public safety, including concealed weapons, emergency vehicles, and private investigators;
- (9) provide investigative assistance to law enforcement and other government agencies;
- (10) collect and provide intelligence information to criminal justice agencies;
- (11) investigate crimes that jeopardize the safety of the citizens, as well as the interests, of the state;
- (12) regulate and investigate laws pertaining to the sale and distribution of liquor;
- (13) make rules to implement this chapter; [~~and~~]

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

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

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

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

(1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

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

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

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

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

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

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

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

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

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

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

(d) other records containing data on individuals the disclosure of which constitutes a

clearly unwarranted invasion of personal privacy; and

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

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

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

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

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

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 7. Section **63-2-302 (Superseded 07/01/03)** is amended to read:

63-2-302 (Superseded 07/01/03). Private records.

(1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

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

(i) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

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

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

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

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

(a) records concerning a current or former employee of, or applicant for employment

with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection ~~[63-2-302]~~(1)(b);

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

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

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

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

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

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

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

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

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

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

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

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 8. **Effective date.**

This act takes effect May 5, 2003, except that the amendments to Section 63-2-302 (Effective 07/01/03) take effect July 1, 2003.