

1 **AMENDMENTS TO BACKGROUND CHECKS BY**

2 **DEPARTMENT OF HEALTH**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: D. Gregg Buxton**

6 Senate Sponsor: Allen M. Christensen

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Department of Health authority to conduct background checks for
11 health care facilities, emergency medical technicians, and child care facilities.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ allows the Department of Health to have access to juvenile records for certification
15 or licensing of people with direct responsibility for the safety of children, the
16 elderly, or the disabled in health care facilities, or as an EMT, if the applicant:

- 17 • is under the age of 28; or
- 18 • is over the age of 28 if the individual has a criminal record as an adult;

19 ▶ limits the department's current authority to access juvenile records for certain people
20 associated with child care facilities to those people:

- 21 • under the age of 28; or
- 22 • over the age of 28 if the individual has a criminal record as an adult; and

23 ▶ establishes consistent rulemaking authority for the department to grant exceptions to
24 licensing prohibitions when licensing applicants for health facilities, day care
25 centers, and EMTs.

26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill takes effect July 1, 2007.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **26-8a-310**, as enacted by Chapter 141, Laws of Utah 1999

33 **26-21-9.5**, as last amended by Chapter 77, Laws of Utah 2006

34 **26-39-107**, as last amended by Chapter 103, Laws of Utah 2006



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

37 Section 1. Section **26-8a-310** is amended to read:

38 **26-8a-310. Criminal background check.**

39 (1) At the time of application for, or renewal of, a certificate, the department shall
40 obtain, at the applicant's expense, information from a criminal history record or warrant of
41 arrest information maintained by the Department of Public Safety pursuant to Title 53, Chapter
42 10, Part 2, Bureau of Criminal Identification, to determine whether the individual has been
43 convicted of a crime that bears upon his fitness to be certified or to have responsibility for the
44 safety and well-being of children, the elderly, or persons with disabilities.

45 (2) (a) An applicant who has not had residency in the state for the last five years shall
46 submit fingerprints and other identifying information.

47 (b) The department shall submit fingerprints obtained under Subsection (2)(a) to the
48 Department of Public Safety to be forwarded to the Federal Bureau of Investigation for a
49 nationwide criminal history record check to determine whether the individual has been
50 convicted of a crime that bears upon his fitness to be certified or to have responsibility for the
51 safety and well-being of children, the elderly, or persons with disabilities.

52 (3) The department shall have access to juvenile court records to determine whether the
53 applicant has been adjudicated in juvenile court of committing an act which if committed by an
54 adult would be a felony or misdemeanor and that bears upon the applicant's fitness to be
55 certified or to have responsibility for the safety and well-being of children, the elderly, or
56 persons with disabilities if:

57 (a) the applicant is under the age of 28; or

58 (b) the applicant is over the age of 28 and has been convicted, has pleaded no contest,
59 or is currently subject to a plea in abeyance or diversion agreement for a felony or
60 misdemeanor.

61 [~~(3)~~] (4) Information obtained pursuant to Subsections (1) [~~and (2)~~] through (3) may be
62 used to:

- 63 (a) withhold certification or renewal;
- 64 (b) commence or substantiate disciplinary action under Section 26-8a-503;
- 65 (c) enforce the provisions of this chapter; and
- 66 (d) notify the individual's employer as necessary to protect the public.

67 (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
68 Rulemaking Act, consistent with this chapter, defining the circumstances under which an
69 applicant who has been convicted of a criminal offense may receive a certification under this
70 chapter.

71 Section 2. Section **26-21-9.5** is amended to read:

72 **26-21-9.5. Criminal background check and Licensing Information System check.**

73 (1) For purposes of this section:

74 (a) "Covered health care facility" means:

75 (i) home health care agencies;

76 (ii) hospices;

77 (iii) nursing care facilities;

78 (iv) assisted-living facilities;

79 (v) small health care facilities; and

80 (vi) end stage renal disease facilities.

81 (b) "Covered person" includes:

82 (i) the following people who provide direct patient care:

83 (A) employees;

84 (B) volunteers; and

85 (C) people under contract with the facility; and

86 (ii) for residential settings, any individual residing in the home where the assisted
87 living or small health care program is to be licensed who:

88 (A) is 18 years of age or older; or

89 (B) is a child between the age of 12 and 17 years of age, however the identifying
90 information required for a child between the age of 12 and 17 does not include fingerprints.

91 ~~[(+)]~~ (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
92 covered health care facility~~[-, as defined in Subsection (10);]~~ at the time of initial application for
93 a license and license renewal shall:

94 (a) submit the name and other identifying information of each covered person
95 ~~[associated with the]~~ at the covered facility who:

96 (i) provides direct care to a patient; and

97 (ii) has been the subject of a criminal background check within the preceding
98 three-year period by a public or private entity recognized by the department; and

99 (b) submit the name and other identifying information, which may include fingerprints,
100 of each covered person ~~[associated with the]~~ at the covered facility who~~[-(i) provides direct~~
101 ~~care to a patient; and (ii)]~~ has not been the subject of a criminal background check in
102 accordance with Subsection (1)(a)(ii).

103 ~~[(2)]~~ (3) (a) The department shall forward the information received under Subsection
104 ~~[(+)]~~ (2)(b) to the Criminal Investigations and Technical Services Division of the Department
105 of Public Safety for processing to determine whether ~~[an]~~ the covered individual has been
106 convicted of any crime.

107 (b) ~~[Hf]~~ Except for individuals described in Subsection (1)(b)(ii)(B), if an individual has
108 not had residency in Utah for the last five years, the individual shall submit fingerprints for an
109 FBI national criminal history record check. The fingerprints shall be submitted to the FBI
110 through the Criminal Investigations and Technical Services Division. The individual or
111 licensee is responsible for the cost of the fingerprinting and national criminal history check.

112 ~~[(3)]~~ (4) The department may determine whether:

113 (a) an individual whose name and other identifying information has been submitted

114 pursuant to Subsection ~~[(1)]~~ (2) and who provides direct care to children is listed in the
115 Licensing Information System described in Section 62A-4a-1006 or has a substantiated finding
116 by a court of a severe type of child abuse or neglect under Section 78-3a-320, if identification
117 as a possible perpetrator of child abuse or neglect is relevant to the employment activities of
118 that individual; ~~[or]~~

119 (b) an individual whose name and other identifying information has been submitted
120 pursuant to Subsection ~~[(1)]~~ (2) and who provides direct care to disabled or elder adults, or
121 who is residing in a residential home that is a facility licensed to provide direct care to disabled
122 or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or
123 elder adult by accessing in accordance with Subsection ~~[(4)]~~ (5) the database created in Section
124 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,
125 or exploitation is relevant to the employment activities or residence of that person; or

126 (c) an individual whose name or other identifying information has been submitted
127 pursuant to Subsection (2) has been adjudicated in a juvenile court of committing an act which
128 if committed by an adult would be a felony or a misdemeanor if:

129 (i) the individual is under the age of 28 years; or

130 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
131 or is currently subject to a plea in abeyance or diversion agreement for any felony or
132 misdemeanor.

133 ~~[(4)]~~ (5) (a) The department shall:

134 (i) designate two persons within the department to access;

135 (A) the Licensing Information System described in Section 62A-4a-1006 ~~[and]~~;

136 (B) court records under Subsection 78-3a-320(6) ~~[and two persons to access]~~;

137 (C) the database described in Subsection ~~[(3)]~~ (4)(b); and

138 (D) juvenile court records as permitted by Subsection (4)(c); and

139 (ii) adopt measures to:

140 (A) protect the security of the Licensing Information System, the court records, and the
141 database; and

142 (B) strictly limit access to the Licensing Information System, the court records, and the
143 database to those designated under Subsection [~~(4)~~] (5)(a)(i).

144 (b) Those designated under Subsection [~~(4)~~] (5)(a)(i) shall receive training from the
145 Department of Human Services with respect to:

146 (i) accessing the Licensing Information System, the court records, and the database;

147 (ii) maintaining strict security; and

148 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
149 information.

150 (c) Those designated under Subsection [~~(4)~~] (5)(a)(i):

151 (i) are the only ones in the department with the authority to access the Licensing
152 Information System, the court records, and database; and

153 (ii) may only access the Licensing Information System, the court records, and the
154 database for the purpose of licensing and in accordance with the provisions of Subsection [~~(3)~~]
155 (4).

156 [~~(5)~~] (6) Within ten days of initially hiring [~~an~~] a covered individual, a covered health
157 care facility shall submit the covered individual's information to the department in accordance
158 with Subsection [~~(1)~~] (2).

159 [~~(6)~~] (7) The department shall adopt rules under Title 63, Chapter 46a, Utah
160 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under
161 which a person who has been convicted of a criminal offense, or a person described in
162 Subsection [~~(3)~~] (4), may provide direct care to a patient in a covered health care facility,
163 taking into account the nature of the criminal conviction or substantiated finding and its
164 relation to patient care.

165 [~~(7)~~] (8) The department may, in accordance with Section 26-1-6, assess reasonable
166 fees for a criminal background check processed pursuant to this section.

167 [~~(8)~~] (9) The department may inform the covered health care facility of information
168 discovered under Subsection [~~(3)~~] (4) with respect to [~~an~~] a covered individual [~~associated with~~
169 the facility].

170 ~~[(9)]~~ (10) A covered health care facility is not civilly liable for submitting information
171 to the department as required by ~~[Subsection (1)]~~ this section.

172 ~~[(10) For purposes of this section, "covered health care facility" only includes:]~~

173 ~~[(a) home health care agencies;]~~

174 ~~[(b) hospices;]~~

175 ~~[(c) nursing care facilities;]~~

176 ~~[(d) assisted-living facilities;]~~

177 ~~[(e) small health care facilities; and]~~

178 ~~[(f) end-stage renal disease facilities.]~~

179 Section 3. Section **26-39-107** is amended to read:

180 **26-39-107. Disqualified individuals -- Criminal history checks -- Payment of**
181 **costs.**

182 (1) (a) Each person requesting a residential certificate or to be licensed or to renew a
183 license under this chapter shall submit to the department the name and other identifying
184 information, which shall include fingerprints, of existing, new, and proposed:

185 (i) owners;

186 (ii) directors;

187 (iii) members of the governing body;

188 (iv) employees;

189 (v) providers of care;

190 (vi) volunteers, except parents of children enrolled in the programs; and

191 (vii) all adults residing in a residence where child care is provided.

192 (b) A person seeking renewal of a residential certificate or license under this section is
193 not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through
194 (vi), if:

195 (i) the individual has resided in Utah for the last five years;

196 (ii) the individual has:

197 (A) previously submitted fingerprints under this section for a national criminal history

198 record check; and

199 (B) resided in Utah continuously since that time; or

200 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection
201 (1)(a) with a child care provider having a residential certificate or licensed under this section
202 and the individual has resided in Utah continuously since that time.

203 (c) (i) The Utah Division of Criminal Investigation and Technical Services within the
204 Department of Public Safety shall process the information required under Subsection (1)(a) to
205 determine whether the individual has been convicted of any crime.

206 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit
207 fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record
208 check.

209 (iii) The applicant for the license or residential certificate shall pay the cost of
210 conducting a record check under this Subsection (1)(c).

211 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a
212 license under this chapter shall submit to the department the name and other identifying
213 information of any child age 12 through 17 who resides in the residence where the child care is
214 provided. The identifying information required for a child age 12 through 17 does not include
215 fingerprints.

216 (b) The department shall access the juvenile court records to determine whether ~~the~~
217 juvenile a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court
218 of committing an act which if committed by an adult would be a felony or misdemeanor[?]; if:

219 (i) the person described in Subsection (1) is under the age of 28; or

220 (ii) the person described in Subsection (1) is:

221 (A) over the age of 28; and

222 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in
223 abeyance or diversion agreement for a felony or misdemeanor.

224 (3) Except as provided in Subsection (4), a licensee under this chapter may not permit a
225 person who has been convicted, has pleaded no contest, or is currently subject to a plea in

226 abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of
227 Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which
228 if committed by an adult would be a felony or a misdemeanor, to:

- 229 (a) provide child care;
- 230 (b) provide volunteer services for a licensed child care program or a child care program
231 operating under a residential child care certificate;
- 232 (c) reside at the premises where child care is provided; or
- 233 (d) function as an owner, director, or member of the governing body of a licensed child
234 care program or a child care program operating under a residential child care certificate.

235 (4) (a) The department may, by rule, exempt the following from the restrictions of
236 Subsection (3):

- 237 (i) specific misdemeanors; and
- 238 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be
239 misdemeanors.

240 (b) In accordance with criteria established by rule, the executive director may consider
241 and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection
242 (4)(a) from the restrictions of Subsection (3).

243 **Section 4. Effective date.**

244 This bill takes effect July 1, 2007.