

1 **REPORTING ABUSE OR NEGLECT OF THE**
2 **ELDERLY OR DISABLED**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lynn N. Hemingway**

6 Senate Sponsor: Gene Davis

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Health Code and the Human Services Code to permit background
11 checks for an individual who cares for an elderly or disabled person and creates a
12 private right of action for failure to report abuse or neglect.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ permits a person who is hiring an individual to come into the home of an elderly or
16 disabled person to obtain a background check of the person;
- 17 ▶ authorizes the Department of Health to conduct the background check and access
18 the database of substantiated abuse and neglect cases when requested by an
19 individual seeking home care;
- 20 ▶ authorizes the Department of Health to:
 - 21 • communicate its findings to the individual seeking home care; and
 - 22 • to charge a reasonable fee for the background check;
- 23 ▶ limits the use of the information by the individual seeking home care to purposes
24 directly related to hiring an individual for care of an elderly or disabled person in
25 their private home;
- 26 ▶ makes it an infraction and subjects the person to civil liability if the person submits
27 information about an individual to the department for a background check for any
28 purpose other than hiring for the care of an elderly or disabled person; and
- 29 ▶ establishes a private right of action against a health care facility that is required to

30 report elder and disabled abuse or neglect and knowingly fails to make the required report.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **26-21-9.5**, as last amended by Laws of Utah 2008, Chapters 3 and 382

38 **62A-3-305**, as last amended by Laws of Utah 2008, Chapter 91

39

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

41 Section 1. Section **26-21-9.5** is amended to read:

42 **26-21-9.5. Criminal background check and Licensing Information System check.**

43 (1) For purposes of this section:

44 (a) "Covered employer" means an individual who:

45 (i) is not a covered health care facility;

46 (ii) is not a licensed business within the state; and

47 (iii) is hiring an individual to provide services to an elderly or disabled person in the
48 home of the elderly or disabled person.

49 [~~(a)~~] (b) "Covered health care facility" means:

50 (i) home health care agencies;

51 (ii) hospices;

52 (iii) nursing care facilities;

53 (iv) assisted-living facilities;

54 (v) small health care facilities; and

55 (vi) end stage renal disease facilities.

56 [~~(b)~~] (c) "Covered person" includes:

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

58 (A) employees;
59 (B) volunteers; and
60 (C) people under contract with the covered health care facility; and
61 (ii) for residential settings, any individual residing in the home where the assisted
62 living or small health care program is to be licensed who:

63 (A) is 18 years of age or older; or
64 (B) is a child between the age of 12 and 17 years of age; however, the identifying
65 information required for a child between the age of 12 and 17 does not include fingerprints.

66 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
67 covered health care facility at the time of initial application for a license and license renewal
68 shall:

69 (a) submit the name and other identifying information of each covered person at the
70 covered facility who:

71 (i) provides direct care to a patient; and
72 (ii) has been the subject of a criminal background check within the preceding
73 three-year period by a public or private entity recognized by the department; and

74 (b) submit the name and other identifying information, which may include
75 fingerprints, of each covered person at the covered facility who has not been the subject of a
76 criminal background check in accordance with Subsection ~~(1)(b)~~ (2)(a)(ii).

77 (3) (a) The department shall forward the information received under Subsection (2)(b)
78 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
79 Public Safety for processing to determine whether the ~~covered~~ individual has been convicted
80 of any crime.

81 (b) Except for individuals described in Subsection (1)~~(b)~~ (c)(ii)(B), if an individual
82 has not had residency in Utah for the last five years, the individual shall submit fingerprints
83 for an FBI national criminal history record check. The fingerprints shall be submitted to the
84 FBI through the Criminal Investigations and Technical Services Division. The individual or
85 licensee is responsible for the cost of the fingerprinting and national criminal history check.

86 (4) The department may determine whether:

87 (a) an individual whose name and other identifying information has been submitted
88 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
89 Information System described in Section 62A-4a-1006 or has a substantiated finding by a
90 court of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
91 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
92 individual;

93 (b) an individual whose name and other identifying information has been submitted
94 pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or
95 who is residing in a residential home that is a facility licensed to provide direct care to
96 disabled or elder adults has a substantiated finding of abuse, neglect, or exploitation of a
97 disabled or elder adult by accessing in accordance with Subsection (5) the database created in
98 Section 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse,
99 neglect, or exploitation is relevant to the employment activities or residence of that person; or

100 (c) an individual whose name or other identifying information has been submitted
101 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an
102 act which if committed by an adult would be a felony or a misdemeanor if:

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

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

107 (5) (a) The department shall:

108 (i) designate [~~two~~] persons within the department to access:

109 (A) the Licensing Information System described in Section 62A-4a-1006;

110 (B) court records under Subsection 78A-6-323(6);

111 (C) the database described in Subsection (4)(b); and

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

113 (ii) adopt measures to:

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

116 (B) strictly limit access to the Licensing Information System, the court records, and
117 the database to those designated under Subsection (5)(a)(i).

118 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
119 Department of Human Services with respect to:

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

121 (ii) maintaining strict security; and

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

124 (c) Those designated under Subsection (5)(a)(i):

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

127 (ii) may only access the Licensing Information System, the court records, and the
128 database for the purpose of licensing and in accordance with the provisions of Subsection (4).

129 (6) (a) Within ten days of initially hiring a covered individual, a covered health care
130 facility shall submit the covered individual's information to the department in accordance with
131 Subsection (2).

132 (b) (i) Prior to, or within ten days of initially hiring an individual to provide care to an
133 elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered
134 employer may submit the employed individual's information to the department.

135 (ii) The department shall:

136 (A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection
137 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse,
138 neglect, or exploitation of a minor or an elderly adult; and

139 (B) in accordance with Subsection (9), inform the covered employer of the
140 department's findings.

141 (c) A covered employer:

142 (i) must certify to the department that the covered employer intends to hire, or has
143 hired, the individual whose information the covered employer has submitted to the department
144 for the purpose of providing care to an elderly adult or a disabled person in the home of the
145 elderly adult or disabled person;

146 (ii) must pay the reasonable fees established by the department under Subsection (8);
147 and

148 (iii) commits an infraction if the covered employer intentionally misrepresents any fact
149 certified under Subsection (6)(c)(i).

150 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
151 Rulemaking Act, consistent with this chapter, defining the circumstances under which a
152 person who has been convicted of a criminal offense, or a person described in Subsection (4),
153 may provide direct care to a patient in a covered health care facility, taking into account the
154 nature of the criminal conviction or substantiated finding and its relation to patient care.

155 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
156 a criminal background check processed pursuant to this section.

157 (9) The department may inform the covered health care facility or a covered employer
158 of information discovered under Subsection (4) with respect to a covered individual, or an
159 individual whose name is submitted by a covered employer.

160 (10) (a) A covered health care facility is not civilly liable for submitting information to
161 the department as required by this section.

162 (b) A covered employer is not civilly liable for submitting information to the
163 department as permitted by this section if the covered employer:

164 (i) complies with Subsection (6)(c)(i); and

165 (ii) does not use the information obtained about an individual under this section for
166 any purpose other than hiring decisions directly related to the care of the elderly adult or
167 disabled person.

168 Section 2. Section **62A-3-305** is amended to read:

169 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**

170 **Penalty -- Nonmedical healing.**

171 (1) Any person who has reason to believe that any vulnerable adult has been the
172 subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services
173 intake or the nearest law enforcement agency. When the initial report is made to law
174 enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult
175 Protective Services and law enforcement shall coordinate, as appropriate, their efforts to
176 provide protection to the vulnerable adult.

177 (2) When the initial report or subsequent investigation by Adult Protective Services
178 indicates that a criminal offense may have occurred against a vulnerable adult:

179 (a) Adult Protective Services shall notify the nearest local law enforcement agency
180 regarding the potential offense; and

181 (b) the law enforcement agency may initiate an investigation in cooperation with
182 Adult Protective Services.

183 (3) Anyone who in good faith makes a report or otherwise notifies a law enforcement
184 agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune
185 from civil and criminal liability in connection with the report or other notification.

186 (4) (a) Any person who willfully fails to report suspected abuse, neglect, or
187 exploitation of a vulnerable adult is guilty of a class B misdemeanor.

188 (b) A covered health care facility as defined in Section 26-21-9.5 that knowingly fails
189 to report suspected abuse or neglect as required by this section, is subject to a private right of
190 action and liability for the abuse or neglect of another person that is committed by the
191 individual who was not reported to Adult Protective Services in accordance with this section.

192 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person
193 who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a
194 report, a witness, the person who made the report, or any other person cooperating with an
195 investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

196 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason
197 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of

198 medical care.