

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

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: Gene Davis

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ permits a person who is hiring an individual to come into the home of an elderly or disabled person to obtain a background check of the person;
- ▶ authorizes the Department of Health to conduct the background check and access the database of substantiated abuse and neglect cases when requested by an individual seeking home care;
- ▶ authorizes the Department of Health to:
 - communicate its findings to the individual seeking home care; and
 - to charge a reasonable fee for the background check;
- ▶ limits the use of the information by the individual seeking home care to purposes directly related to hiring an individual for care of an elderly or disabled person in their private home;
- ▶ makes it an infraction and subjects the person to civil liability if the person submits 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 intentionally fails to make the
 31 required report.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **26-21-9.5**, as last amended by Laws of Utah 2008, Chapters 3 and 382

39 **62A-3-305**, as last amended by Laws of Utah 2008, Chapter 91



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

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

43 **26-21-9.5. Criminal background check and Licensing Information System check.**

44 (1) For purposes of this section:

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

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

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

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

50 ~~(a)~~ (b) "Covered health care facility" means:

51 (i) home health care agencies;

52 (ii) hospices;

53 (iii) nursing care facilities;

54 (iv) assisted-living facilities;

55 (v) small health care facilities; and

56 (vi) end stage renal disease facilities.

57 ~~(b)~~ (c) "Covered person" includes:

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

- 59 (A) employees;
- 60 (B) volunteers; and
- 61 (C) people under contract with the covered health care facility; and
- 62 (ii) for residential settings, any individual residing in the home where the assisted
- 63 living or small health care program is to be licensed who:
- 64 (A) is 18 years of age or older; or
- 65 (B) is a child between the age of 12 and 17 years of age; however, the identifying
- 66 information required for a child between the age of 12 and 17 does not include fingerprints.
- 67 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
- 68 covered health care facility at the time of initial application for a license and license renewal
- 69 shall:
- 70 (a) submit the name and other identifying information of each covered person at the
- 71 covered facility who:
- 72 (i) provides direct care to a patient; and
- 73 (ii) has been the subject of a criminal background check within the preceding
- 74 three-year period by a public or private entity recognized by the department; and
- 75 (b) submit the name and other identifying information, which may include fingerprints,
- 76 of each covered person at the covered facility who has not been the subject of a criminal
- 77 background check in accordance with Subsection ~~(1)~~ (2)(a)(ii).
- 78 (3) (a) The department shall forward the information received under Subsection (2)(b)
- 79 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
- 80 Public Safety for processing to determine whether the ~~[covered]~~ individual has been convicted
- 81 of any crime.
- 82 (b) Except for individuals described in Subsection (1)~~(b)~~ (c)(ii)(B), if an individual
- 83 has not had residency in Utah for the last five years, the individual shall submit fingerprints for
- 84 an FBI national criminal history record check. The fingerprints shall be submitted to the FBI
- 85 through the Criminal Investigations and Technical Services Division. The individual or
- 86 licensee is responsible for the cost of the fingerprinting and national criminal history check.
- 87 (4) The department may determine whether:
- 88 (a) an individual whose name and other identifying information has been submitted
- 89 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing

90 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
91 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
92 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
93 individual;

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

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

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

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

108 (5) (a) The department shall:

109 (i) designate two persons within the department to access:

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

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

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

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

114 (ii) adopt measures to:

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

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

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

- 121 (i) accessing the Licensing Information System, the court records, and the database;
122 (ii) maintaining strict security; and
123 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
124 information.
- 125 (c) Those designated under Subsection (5)(a)(i):
126 (i) are the only ones in the department with the authority to access the Licensing
127 Information System, the court records, and database; and
128 (ii) may only access the Licensing Information System, the court records, and the
129 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
- 130 (6) (a) Within ten days of initially hiring a covered individual, a covered health care
131 facility shall submit the covered individual's information to the department in accordance with
132 Subsection (2).
- 133 (b) (i) Prior to, or within ten days of initially hiring an individual to provide care to an
134 elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered
135 employer may submit the employed individual's information to the department.
- 136 (ii) The department shall:
137 (A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection
138 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse,
139 neglect, or exploitation of a minor or an elderly adult; and
140 (B) in accordance with Subsection (9), inform the covered employer of the
141 department's findings.
- 142 (c) A covered employer:
143 (i) must certify to the department that the covered employer intends to hire, or has
144 hired, the individual whose information the covered employer has submitted to the department
145 for the purpose of providing care to an elderly adult or a disabled person in the home of the
146 elderly adult or disabled person;
147 (ii) must pay the reasonable fees established by the department under Subsection (8);
148 and
149 (iii) commits an infraction if the covered employer intentionally misrepresents any fact
150 certified under Subsection (6)(c)(i).
- 151 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative

152 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
153 who has been convicted of a criminal offense, or a person described in Subsection (4), may
154 provide direct care to a patient in a covered health care facility, taking into account the nature
155 of the criminal conviction or substantiated finding and its relation to patient care.

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

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

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

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

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

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

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

170 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**
171 **Penalty -- Nonmedical healing.**

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

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

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

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

183 Protective Services.

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

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

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

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

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

Legislative Review Note
as of 1-26-09 2:59 PM

Office of Legislative Research and General Counsel

H.B. 142 - Reporting Abuse or Neglect of the Elderly or Disabled

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will have a net \$0 cost to the State. The bill will generate \$60,000 in dedicated credits and the Department of Health will require appropriations of \$60,000.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Dedicated Credits	\$0	\$60,000	\$60,000	\$0	\$60,000	\$60,000
Total	\$0	\$60,000	\$60,000	\$0	\$60,000	\$60,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Background screenings will cost about \$30 each.
