

Senator Margaret Dayton proposes the following substitute bill:

SCHOOL EMPLOYEE CRIMINAL BACKGROUND

CHECK

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheryl L. Allen

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions regarding criminal background checks for employees of, or volunteers at, school districts, charter schools, and private schools.

Highlighted Provisions:

This bill:

- ▶ allows a school district or charter school to require an employee to periodically submit to a criminal background check in accordance with rules of the State Board of Education or policies of the local school board or charter school governing board;
- ▶ provides that a school district, charter school, or private school may require an applicant or employee to pay for the costs of a criminal background check;
- ▶ allows the State Board of Education to require an educator to submit to a criminal background check where reasonable cause exists;
- ▶ imposes requirements for criminal background checks of contract employees; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53A-3-410**, as last amended by Laws of Utah 2005, Chapter 35

30 **53A-6-401**, as last amended by Laws of Utah 2000, Chapter 24

31 REPEALS AND REENACTS:

32 **53A-1a-512.5**, as enacted by Laws of Utah 2003, Chapter 199



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

35 Section 1. Section **53A-1a-512.5** is repealed and reenacted to read:

36 **53A-1a-512.5. Criminal background checks on school personnel.**

37 The following individuals are required to submit to a criminal background check as
38 provided in Section 53A-3-410:

39 (1) an employee of a charter school;

40 (2) a volunteer for a charter school who is given significant unsupervised access to a
41 student in connection with the volunteer's assignment; or

42 (3) a contract employee, as defined in Section 53A-3-410, who works at a charter
43 school.

44 Section 2. Section **53A-3-410** is amended to read:

45 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**
46 **of costs -- Request for review.**

47 (1) As used in this section:

48 (a) "Administrator" means an administrator at a school district, charter school, or
49 private school that requests the Criminal Investigations and Technical Services Division of the
50 Department of Public Safety to conduct a criminal background check on an applicant or
51 employee.

52 (b) "Applicant" means a person under consideration for:

53 (i) an offer of employment at a school district, charter school, or private school; or

54 (ii) appointment as a volunteer for a school district, charter school, or private school
55 who will be given significant unsupervised access to a student in connection with the
56 volunteer's assignment.

57 (c) "Contract employee" means an employee of a staffing service who works at a
58 public or private school under a contract between the staffing service and a school district,
59 charter school, or private school.

60 (d) "Division" means the Criminal Investigations and Technical Services Division of
61 the Department of Public Safety.

62 ~~[(1)]~~ (2) A school district superintendent ~~[or]~~, the superintendent's designee, or the
63 chief administrative officer of a charter school:

64 (a) shall require ~~[a potential employee or a volunteer who will be given significant~~
65 ~~unsupervised access to a student in connection with the volunteer's assignment]~~ an applicant to
66 submit to a criminal background check as a condition for employment or appointment; ~~[and]~~

67 (b) shall require an employee to periodically submit to a criminal background check in
68 accordance with rules of the State Board of Education or policies of the local school board or
69 charter school governing board; and

70 ~~[(b)]~~ (c) where reasonable cause exists, may require an existing employee or volunteer
71 to submit to a criminal background check.

72 ~~[(2)]~~ (3) The chief administrative officer of a private school may require, and the chief
73 administrative officer of ~~[the]~~ a private school that enrolls scholarship students under Chapter
74 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

75 (a) ~~[a potential employee or volunteer]~~ an applicant to submit to a criminal background
76 check as a condition for employment or appointment; and

77 (b) where reasonable cause exists, an existing employee or volunteer to submit to a
78 criminal background check.

79 ~~[(3) The]~~ (4) An applicant, volunteer, or employee shall receive written notice that
80 ~~[the]~~ a criminal background check has been requested.

81 ~~[(4)]~~ (5) (a) (i) Fingerprints of the ~~[individual]~~ applicant, volunteer, or employee shall
82 be taken, and the Criminal Investigations and Technical Services Division of the Department of
83 Public Safety, established in Section 53-10-103, shall release the ~~[individual's]~~ applicant's,
84 volunteer's, or employee's full criminal history record ~~[of criminal convictions]~~ to the
85 administrator requesting the information.

86 (ii) The division shall maintain a separate file of fingerprints submitted under
87 Subsection ~~[(4)]~~ (5)(a)(i) and notify the ~~[State Office of Education]~~ administrator when a new

88 entry is made against ~~[a person]~~ an employee or volunteer whose fingerprints are held in the
89 file regarding:

90 (A) any matters involving an alleged sexual offense;

91 (B) any matters involving an alleged ~~[felony or class A misdemeanor drug]~~
92 drug-related offense; ~~[or]~~

93 (C) any matters involving an alleged alcohol-related offense; or

94 ~~[(C)]~~ (D) any matters involving an alleged offense against the person under Title 76,
95 Chapter 5, Offenses Against the Person.

96 (iii) The cost of maintaining the separate file shall be paid by the ~~[State Office of~~
97 Education] school district, charter school, or private school from fees charged to those
98 submitting fingerprints.

99 (b) Information received by the division from entities other than agencies or political
100 subdivisions of the state may not be released to a private school unless the release is
101 permissible under applicable laws or regulations of the entity providing the information.

102 ~~[(5)]~~ (6) The superintendent, local school board, or their counterparts at a charter
103 school or private school shall consider only those convictions, pleas in abeyance, or arrests
104 which are job-related for the employee, applicant, or volunteer.

105 ~~[(6)(a) The district or private school shall pay the cost of the background check except~~
106 ~~as otherwise provided in Subsection (6)(b), and the monies collected shall be credited to the~~
107 ~~Criminal Investigations and Technical Services Division to offset its expenses.]~~

108 ~~[(b) The]~~ (7) (a) A school district, charter school, or private school may require an
109 applicant to pay the costs of a background check as a condition for consideration for
110 employment or appointment, if [:(i)] the applicant:

111 ~~[(A)]~~ (i) has passed an initial review; and

112 ~~[(B)]~~ (ii) is one of a pool of no more than five candidates for a position[; and].

113 ~~[(C) except as may be otherwise provided by state board rule for an applicant who~~
114 ~~submitted to a background check while completing a higher education program at a Utah~~
115 ~~institution of higher education, has not been the subject of a criminal background check of~~
116 ~~similar scope during the preceding two years that was requested by a potential employer or the~~
117 ~~State Board of Education; and]~~

118 ~~[(ii) a copy of the background check is provided to the district or school considering~~

119 employment or appointment of the applicant.]

120 (b) A school district or charter school may require an employee to pay the cost of a
121 periodic criminal background check required pursuant to rules of the State Board of Education
122 or policies of the local school board or charter school governing board.

123 [~~(7)~~] (8) The Criminal Investigations and Technical Services Division shall, upon
124 request, seek additional information from regional or national criminal data files in responding
125 to inquiries under this section.

126 [~~(8)(a)~~] ~~A private school seeking information from the Federal Bureau of Investigation~~
127 ~~or other national criminal data file which the private school may not access directly shall~~
128 ~~submit its request to the Teacher Certification Section of the State Board of Education, together~~
129 ~~with the required fee and the school's criminal data-related criteria for limiting or rejecting~~
130 ~~employment.]~~

131 [~~(b)~~] ~~The section shall submit the request and, upon receiving the requested~~
132 ~~information, shall determine whether the subject of the inquiry is entitled to employment under~~
133 ~~the school's criteria.]~~

134 [~~(c)~~] ~~The section shall disclose its determination to the school but may not disclose the~~
135 ~~data in the national criminal data file.]~~

136 (9) (a) [~~The~~] An applicant, volunteer, or employee shall have an opportunity to respond
137 to any information received as a result of [~~the~~] a criminal background check.

138 [~~(b)~~] ~~A private school applicant, volunteer, or employee who wishes to respond shall:]~~

139 [~~(i)~~] ~~submit a request to the school; and]~~

140 [~~(ii)~~] ~~give a written statement to the Teacher Certification Office authorizing the office~~
141 ~~to release the background check information to a hearing officer selected by the individual and~~
142 ~~the school.]~~

143 [~~(c)~~] ~~The individual and the school shall equally share any costs incurred under~~
144 ~~Subsection (9)(b).]~~

145 [~~(d)~~] (b) A public agency shall resolve any request for review by an applicant,
146 volunteer, or employee [~~seeking employment or employed by the agency~~] through [~~normal~~]
147 administrative procedures established by the agency.

148 (10) (a) If a person is denied employment or is dismissed from employment because of
149 information obtained through a criminal background check, the person shall receive written

150 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons
151 [~~under the procedures set forth in Subsection (9)~~].

152 (b) A school district or charter school shall resolve any request for a review of a denial
153 of or dismissal from employment through administrative procedures established by the school
154 district or charter school.

155 (11) Information obtained under this part is confidential and may only be disclosed as
156 provided in this section.

157 (12) (a) A school district, charter school, or private school that enrolls scholarship
158 students under Chapter 1a, Part 7, Carson Smith Scholarships for Student with Special Needs
159 Act, may contract with a staffing service to provide a contract employee if:

160 (i) the school district, charter school, or private school requests the Criminal
161 Investigations and Technical Services Division of the Department of Public Safety to conduct a
162 criminal background check on the contract employee that is placed at the school district,
163 charter school, or private school;

164 (ii) fingerprints of the contract employee are submitted to the division;

165 (iii) the division releases the contract employee's full criminal history record to the
166 school district, charter school, or private school requesting the criminal background check; and

167 (iv) the school district, charter school, or private school requesting the criminal
168 background check determines whether the contract employee is suitable for employment based
169 on the standard established in Subsection (6).

170 (b) The division shall maintain a separate file of fingerprints submitted under
171 Subsection (12)(a) and notify the administrator when a new entry is made against a contract
172 employee whose fingerprints are held in the file regarding a matter listed in Subsection
173 (5)(a)(ii).

174 (c) A school district, charter school, or private school may require a contract employee
175 to pay the costs of a criminal background check, including the costs of the division to maintain
176 the file required under Subsection (12)(b).

177 (d) (i) A contract employee who applies for a license issued by the State Board of
178 Education shall submit to a criminal background check as provided in Section 53A-6-401.

179 (ii) A contract employee who works at a public school and does not hold a license
180 issued by the State Board of Education shall submit to a criminal background check every six

181 years, or within a shorter period, if required by rules of the State Board of Education or policies
182 of a local school board or charter school governing board.

183 Section 3. Section **53A-6-401** is amended to read:

184 **53A-6-401. Background checks.**

185 (1) (a) A license applicant shall submit to a background check as a condition for
186 licensing.

187 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or
188 revoked license.

189 (2) Where reasonable cause exists, the State Board of Education may require an
190 educator to submit to a criminal background check.

191 [~~2~~] (3) (a) The office shall establish a procedure for obtaining and evaluating relevant
192 information concerning license applicants, including fingerprinting the applicant and
193 submitting the prints to the Criminal Investigations and Technical Services Division of the
194 Department of Public Safety for checking against applicable state, regional, and national
195 criminal records files.

196 (b) The Criminal Investigations and Technical Services Division shall release to the
197 office all information received in response to the office's request.

198 (c) The Criminal Investigations and Technical Services Division shall maintain a
199 separate file of fingerprints submitted under Subsection [~~2~~] (3)(a) and notify the office when a
200 new entry is made against a person whose fingerprints are held in the file regarding any matters
201 involving an alleged:

202 (i) sexual offense;

203 (ii) [~~felony or class A misdemeanor drug~~] drug-related offense; [~~or~~]

204 (iii) alcohol-related offense; or

205 [~~(iii)~~] (iv) offense against the person under Title 76, Chapter 5, Offenses Against the
206 Person.

207 (d) The cost of maintaining the separate file shall be paid by the office from fees
208 charged to those submitting fingerprints.

209 [~~3~~] (4) An applicant or educator shall have an opportunity to respond to any
210 information received by the office as a result of the background check.

211 [~~4~~] (5) In preparing recommendations concerning licensing for submission to the

212 board, the office shall consider only the following matters obtained through fingerprint checks
213 to the extent that they are relevant to the license sought by the applicant or held by the
214 educator:

- 215 (a) convictions, including pleas in abeyance;
- 216 (b) any matters involving an alleged sexual offense;
- 217 (c) any matters involving an alleged felony or class A misdemeanor drug offense;
- 218 (d) any matters involving an alleged offense against the person under Title 76, Chapter
219 5;
- 220 (e) any matters involving a felony;
- 221 (f) any matters involving a class A misdemeanor property offense alleged to have
222 occurred within the previous three years; and
- 223 (g) any matters involving any other type of criminal offense, if more than one
224 occurrence of the same type of offense is alleged to have taken place within the previous eight
225 years.

226 [~~5~~] (6) If a recommendation is made for denial, suspension, or revocation of licensure
227 because of information obtained through a background check, the person shall receive written
228 notice of the reasons for the recommendation and have an opportunity to respond in accordance
229 with procedures set forth under board rules.

230 [~~6~~] (7) Information obtained under this section is confidential and may only be
231 disclosed as provided in this part.

232 [~~7~~] (8) The applicant shall pay the costs of conducting the background check required
233 pursuant to Subsection (1).

234 [~~8~~] (9) This section applies to matters occurring both before and after the effective
235 date of this section.

H.B. 81 1st Sub. (Buff) - School Employee Criminal Background Check

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

The burden of costs for background checks may shift from local governments to individuals.
