

1                   **PUBLIC SCHOOL EMPLOYEE BACKGROUND CHECKS**

2                                   2014 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: Stephen G. Handy**

5                   Senate Sponsor: \_\_\_\_\_

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends provisions related to public school employee background checks.

10                   **Highlighted Provisions:**

11                   This bill:

12                   ▶ provides that a school district or charter school may use the fingerprints of an  
13 employee maintained on file to conduct a periodic background check if the  
14 employee has maintained continuous employment with the school district or charter  
15 school since the date of the initial background check; ~~and~~ **[and]**

15a                   ▶ **requires the Criminal Investigations and Technical Services Division of the**  
15b **Department of Public Safety to notify an administrator at a school district, charter school, or**  
15c **private school when a new entry is made against an employee or volunteer whose fingerprints**  
15d **are held on file regarding any matters involving an alleged offense against property; and** ~~and~~

16                   ▶ makes technical changes.

17                   **Money Appropriated in this Bill:**

18                   None

19                   **Other Special Clauses:**

20                   None

21                   **Utah Code Sections Affected:**

22                   AMENDS:

23                   **53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362

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

26                   Section 1. Section **53A-3-410** is amended to read:

27                   **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**



28 **of costs -- Request for review.**

29 (1) As used in this section:

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

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

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

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

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

42 (d) "Division" means the Criminal Investigations and Technical Services Division of  
43 the Department of Public Safety established in Section 53-10-103.

44 (2) A school district superintendent, the superintendent's designee, or the chief  
45 administrative officer of a charter school:

46 (a) shall require an applicant to submit to a criminal background check as a condition  
47 for employment or appointment;

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

51 (c) where reasonable cause exists, may require an existing employee or volunteer to  
52 submit to a criminal background check.

53 (3) The chief administrative officer of a private school may require, and the chief  
54 administrative officer of a private school that enrolls scholarship students under Chapter 1a,  
55 Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

56 (a) an applicant to submit to a criminal background check as a condition for  
57 employment or appointment; and

58 (b) where reasonable cause exists, an existing employee or volunteer to submit to a

59 criminal background check.

60 (4) ~~[An]~~ A school district, charter school, or private school shall notify an applicant,  
61 volunteer, or employee ~~[shall receive written notice]~~, in writing, that a criminal background  
62 check has been requested.

63 (5) (a) (i) Fingerprints of the applicant, volunteer, or employee shall be taken, and the  
64 ~~[Criminal Investigations and Technical Services Division of the Department of Public Safety,~~  
65 ~~established in Section 53-10-103;]~~ division shall release the applicant's, volunteer's, or  
66 employee's full criminal history record to the administrator requesting the information.

67 (ii) The division shall maintain a separate file of fingerprints submitted under  
68 Subsection (5)(a)(i) and notify the administrator when a new entry is made against an employee  
69 or volunteer whose fingerprints are held in the file regarding:

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

71 (B) any matters involving an alleged drug-related offense;

72 (C) any matters involving an alleged alcohol-related offense; ~~H→ [or] ←H~~

73 (D) any matters involving an alleged offense against the person under Title 76, Chapter  
74 5, Offenses Against the Person ~~H→ [;] ; or~~

74a **(E) any matters involving an alleged offense against property under Title 76,**  
74b **Chapter 6, Offenses Against Property.** ~~←H~~

75 (iii) The ~~[cost of maintaining the separate file shall be paid by the]~~ school district,  
76 charter school, or private school shall pay the cost of maintaining the separate file ~~H→ [from fees~~  
77 ~~charged to [those] applicants, volunteers, and employees submitting fingerprints]~~ ~~←H~~ .

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

81 (6) A school district or charter school may use the fingerprints of an employee  
82 maintained on file under Subsection (5)(a)(ii) to conduct a periodic background check under  
83 Subsection (2)(b) if the employee has maintained continuous employment with the school  
84 district or charter school since the date of the initial background check under Subsection (2)(a).

85 ~~[(6)]~~ (7) The superintendent, local school board, or their counterparts at a charter  
86 school or private school shall consider only those convictions, pleas in abeyance, or arrests  
87 which are job-related for the employee, applicant, or volunteer.

88 ~~[(7)]~~ (8) (a) A school district, charter school, or private school may require an applicant  
89 to pay the costs of a background check as a condition for consideration for employment or

90 appointment, if the applicant:

91 (i) has passed an initial review; and

92 (ii) is one of a pool of no more than five candidates for a position.

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

96 ~~[(8)]~~ (9) The ~~[Criminal Investigations and Technical Services Division]~~ division shall,  
97 upon request, seek additional information from regional or national criminal data files in  
98 responding to inquiries under this section.

99 ~~[(9)]~~ (10) (a) An applicant, volunteer, or employee shall have an opportunity to respond  
100 to any information received as a result of a criminal background check.

101 (b) ~~[A public agency]~~ The division, a school district, charter school, or private school  
102 shall resolve any request for review by an applicant, volunteer, or employee through  
103 administrative procedures established by the ~~[agency]~~ division, a school district, charter school,  
104 or private school.

105 ~~[(10)]~~ (11) (a) If ~~[a person]~~ an individual is denied employment or is dismissed from  
106 employment because of information obtained through a criminal background check, the  
107 ~~[person]~~ individual shall receive written notice of the reasons for denial or dismissal and have  
108 an opportunity to respond to the reasons.

109 (b) A school district or charter school shall resolve any request for a review of a denial  
110 of, or dismissal from, employment through administrative procedures established by the school  
111 district or charter school.

112 ~~[(11)]~~ (12) Information obtained under this part is confidential and may only be  
113 disclosed as provided in this section.

114 ~~[(12)]~~ (13) (a) A school district, charter school, or private school that enrolls  
115 scholarship students under Chapter 1a, Part 7, Carson Smith Scholarships for Students with  
116 Special Needs Act, may contract with a staffing service to provide a contract employee if:

117 (i) the school district, charter school, or private school requests the ~~[Criminal~~  
118 ~~Investigations and Technical Services Division of the Department of Public Safety]~~ division to  
119 conduct a criminal background check on the contract employee that is placed at the school  
120 district, charter school, or private school;

121 (ii) fingerprints of the contract employee are submitted to the division;  
122 (iii) the division releases the contract employee's full criminal history record to the  
123 school district, charter school, or private school requesting the criminal background check; and  
124 (iv) the school district, charter school, or private school requesting the criminal  
125 background check determines whether the contract employee is suitable for employment based  
126 on the standard established in Subsection [~~(6)~~] (7).

127 (b) The division shall maintain a separate file of fingerprints submitted under  
128 Subsection [~~(12)~~] (13)(a) and notify the administrator when a new entry is made against a  
129 contract employee whose fingerprints are held in the file regarding a matter listed in Subsection  
130 (5)(a)(ii).

131 (c) A school district, charter school, or private school may require a contract employee  
132 to pay the costs of a criminal background check, including the costs of the division to maintain  
133 the file required under Subsection [~~(12)~~] (13)(b).

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

136 (ii) A contract employee who works at a public school and does not hold a license  
137 issued by the State Board of Education shall submit to a criminal background check every six  
138 years, or within a shorter period, if required by rules of the State Board of Education or policies  
139 of a local school board or charter school governing board.

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**Legislative Review Note**  
as of 1-30-14 2:02 PM

**Office of Legislative Research and General Counsel**