

## HB0215S01 compared with HB0215

~~{deleted text}~~ shows text that was in HB0215 but was deleted in HB0215S01.

inserted text shows text that was not in HB0215 but was inserted into HB0215S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Stephen G. Handy proposes the following substitute bill:

### PUBLIC SCHOOL EMPLOYEE BACKGROUND CHECKS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

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

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ ~~{provides that a school district or charter school may use the fingerprints of an employee maintained on file to conduct a periodic background check if the employee has maintained continuous employment with the school district or charter school since the date of the initial background check}~~ requires the Criminal Investigations and Technical Services Division of the Department of Public Safety to provide notification to certain entities when a new entry is made against an employee or volunteer whose fingerprints are held on file regarding any matters involving an alleged offense against property;

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- ▶ removes the time limit related to criminal offenses of the same type that the State Board of Education may consider when making licensing decisions; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

**53A-6-401**, as last amended by Laws of Utah 2010, Chapter 362

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

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

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

(1) As used in this section:

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

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

(i) an offer of employment at a school district, charter school, or private school; or  
(ii) appointment as a volunteer for a school district, charter school, or private school who will be given significant unsupervised access to a student in connection with the volunteer's assignment.

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

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

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

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

(b) shall 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; and

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

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

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

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

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

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

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

(A) any matters involving an alleged sexual offense;

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

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

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

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### (E) any matters involving an alleged offense against property under Title 76, Chapter 6, Offenses Against Property.

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

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

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

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

~~{ (7) (8)}~~ (a) A school district, charter school, or private school may require an applicant to pay the costs of a background check as a condition for consideration for employment or appointment, if the applicant:

- (i) has passed an initial review; and
- (ii) is one of a pool of no more than five candidates for a position.

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

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

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

(b) ~~[A public agency]~~ The division, a school district, charter school, or private school shall resolve any request for review by an applicant, volunteer, or employee through

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administrative procedures established by the ~~[agency]~~ division, a school district, charter school, or private school.

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

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

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

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

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

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

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

(iv) the school district, charter school, or private school requesting the criminal background check determines whether the contract employee is suitable for employment based on the standard established in Subsection ~~§(6)§(7)~~.

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

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

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

(ii) A contract employee who works at a public school and does not hold a license issued by the State Board of Education shall submit to a criminal background check every six years, or within a shorter period, if required by rules of the State Board of Education or policies 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~~; Section 2. Section 53A-6-401 is amended to read:

#### 53A-6-401. Background checks.

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

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

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

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

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

(c) The Criminal Investigations and Technical Services Division shall maintain a separate file of fingerprints submitted under Subsection (3)(a) and notify the office when a new

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entry is made against a person whose fingerprints are held in the file regarding any matters involving an alleged:

(i) sexual offense;

(ii) drug-related offense;

(iii) alcohol-related offense; [or]

(iv) offense against the person under Title 76, Chapter 5, Offenses Against the Person[-]; or

(v) offense against property under Title 76, Chapter 6, Offenses Against Property.

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

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

(5) In preparing recommendations concerning licensing for submission to the board, the office shall consider only the following matters obtained through fingerprint checks to the extent that they are relevant to the license sought by the license applicant or held by the educator:

(a) convictions, including pleas in abeyance;

(b) any matters involving an alleged sexual offense;

(c) any matters involving an alleged felony or class A misdemeanor drug offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving a felony;

(f) any matters involving a class A misdemeanor property offense alleged to have occurred within the previous three years; and

(g) any matters involving any other type of criminal offense, if more than one occurrence of the same type of offense is alleged to have taken place [within the previous eight years].

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

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

(8) The license applicant shall pay the costs of conducting the background check required pursuant to Subsection (1).

(9) This section applies to matters occurring both before and after the effective date of this section.