

HB0124S01 compared with HB0124

~~text~~ shows text that was in HB0124 but was deleted in HB0124S01.

text shows text that was not in HB0124 but was inserted into HB0124S01.

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Representative Stephen G. Handy proposes the following substitute bill:

EDUCATION BACKGROUND CHECK AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions regarding criminal background checks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies and amends background check provisions for licensed educators and employees or volunteers who work at local education agencies and certain private schools;
- ▶ amends the Public Safety Code to allow certain qualifying entities to request that the Bureau of Criminal Identification within the Department of Public Safety (bureau) register fingerprints taken for the purpose of conducting a criminal background check with certain systems;

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- ▶ amends background check provisions for charter school governing board members;
- ▶ requires an entity that is authorized to request a background check under the provisions of this bill (authorized entity) to register fingerprints of certain individuals with certain systems for ongoing monitoring;
- ▶ requires the bureau to notify an authorized entity when a new entry is made against an individual whose fingerprints are registered with certain systems regarding any alleged offense or a conviction, including a plea in abeyance;
- ▶ removes the requirement that a local education agency or qualifying private school require certain individuals to periodically submit to a criminal background check;
- ▶ provides that authorized entities may only consider certain offenses when making employment, appointment, or licensing decisions;
- ▶ requires certain individuals to self-report criminal history information to authorized entities in accordance with rules established by the State Board of Education;
- ▶ requires the State Board of Education and the bureau to collaborate to provide training to authorized entities;
- ▶ requires the State Board of Education to update certain rules;
- ▶ requires a local school board or charter school governing board to update certain policies;
- ▶ requires the Legislative Auditor General to issue a report; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53-10-108, as last amended by Laws of Utah 2014, Chapters 79 and 377

53A-1a-504, as repealed and reenacted by Laws of Utah 2014, Chapter 363

53A-1a-512.5, as repealed and reenacted by Laws of Utah 2010, Chapter 362

53A-1a-705, as last amended by Laws of Utah 2009, Chapter 197

53A-6-104.1, as enacted by Laws of Utah 2008, Chapter 145

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53A-6-104.5, as last amended by Laws of Utah 2004, Chapter 19

53A-6-109, as repealed and reenacted by Laws of Utah 1999, Chapter 108

53A-6-306, as last amended by Laws of Utah 2010, Chapter 283

53A-6-403, as enacted by Laws of Utah 1999, Chapter 108

53A-6-404, as last amended by Laws of Utah 2000, Chapter 103

53A-29-104, as enacted by Laws of Utah 1996, Chapter 73

53B-16-404, as enacted by Laws of Utah 1996, Chapter 73

78A-6-1105, as last amended by Laws of Utah 2009, Chapter 148

ENACTS:

53A-15-1501, Utah Code Annotated 1953

53A-15-1502, Utah Code Annotated 1953

53A-15-1503, Utah Code Annotated 1953

53A-15-1504, Utah Code Annotated 1953

53A-15-1505, Utah Code Annotated 1953

53A-15-1506, Utah Code Annotated 1953

53A-15-1507, Utah Code Annotated 1953

53A-15-1508, Utah Code Annotated 1953

53A-15-1509, Utah Code Annotated 1953

53A-15-1510, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

REPEALS:

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

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

Section 1. Section **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records -- Penalty for misuse of records.

(1) As used in this section:

(a) "FBI Rap Back System" means the rap back system maintained by the Federal

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Bureau of Investigation.

~~(f)(b)~~ "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.

~~(f)(c)~~ "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

~~(+)~~ (2) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; and

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

(f) (i) agencies and individuals as the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and

(ii) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees;

(g) a qualifying entity for employment background checks for their own employees and persons who have applied for employment with the qualifying entity; and

(h) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution pursuant to an agreement.

~~(2)~~ (3) An agreement under Subsection ~~(+)~~ (2)(f) or ~~(+)~~ (2)(h) shall specifically

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authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data.

~~[(3)]~~ (4) (a) Before requesting information under Subsection ~~[(1)]~~ (2)(g), a qualifying entity must obtain a signed waiver from the person whose information is requested.

(b) The waiver must notify the signee:

(i) that a criminal history background check will be conducted;

(ii) who will see the information; and

(iii) how the information will be used.

(c) Information received by a qualifying entity under Subsection ~~[(1)]~~ (2)(g) may only be:

(i) available to persons involved in the hiring or background investigation of the employee; and

(ii) used for the purpose of assisting in making an employment or promotion decision.

(d) A person who disseminates or uses information obtained from the division under Subsection ~~[(1)]~~ (2)(g) for purposes other than those specified under Subsection ~~[(3)]~~ (4)(c), in addition to any penalties provided under this section, is subject to civil liability.

(e) A qualifying entity that obtains information under Subsection ~~[(1)]~~ (2)(g) shall provide the employee or employment applicant an opportunity to:

(i) review the information received as provided under Subsection ~~[(8)]~~ (9); and

(ii) respond to any information received.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement this Subsection ~~[(3)]~~ (4).

~~[(g)(i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.]~~

~~[(ii) The name check fee under Subsection (1)(g) is \$15.]~~

~~[(iii) These fees remain in effect until changed by the division through the process under Section 63J-1-504.]~~

~~[(iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.]~~

~~[(h)]~~ (g) The division or its employees are not liable for defamation, invasion of

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privacy, negligence, or any other claim in connection with the contents of information disseminated under Subsection ~~[(1)]~~ (2)(g).

~~[(4)]~~ (5) (a) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated, except under Subsection ~~[(4)]~~ (5)(b), (c), or (d).

(b) A criminal history provided to an agency pursuant to Subsection ~~[(1)]~~ (2)(e) may be provided by the agency to the person who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

(c) A criminal history of a defendant provided to a criminal justice agency under Subsection ~~[(1)]~~ (2)(a) may also be provided by the prosecutor to a defendant's defense counsel, upon request during the discovery process, for the purpose of establishing a defense in a criminal case.

(d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that is under contract with a state agency to provide services may, for the purposes of complying with Subsection 62A-5-103.5(7), provide a criminal history record to the state agency or the agency's designee.

~~[(5)]~~ (6) The division may not disseminate criminal history record information to qualifying entities under Subsection ~~[(1)]~~ (2)(g) regarding employment background checks if the information is related to charges:

- (a) that have been declined for prosecution;
- (b) that have been dismissed; or
- (c) regarding which a person has been acquitted.

~~[(6)]~~ (7) (a) This section does not preclude the use of the division's central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

~~[(7)]~~ (8) Direct access through remote computer terminals to criminal history record information in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

~~[(8)]~~ (9) (a) The commissioner shall establish procedures to allow an individual right

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of access to review and receive a copy of the individual's criminal history report.

(b) A processing fee for the right of access service, including obtaining a copy of the individual's criminal history report under Subsection ~~[(8)]~~ (9)(a) is \$15. This fee remains in effect until changed by the commissioner through the process under Section 63J-1-504.

(c) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

~~[(9)]~~ (10) The private security agencies as provided in Subsection ~~[(11)]~~ (2)(f)(ii):

(a) shall be charged for access; and

(b) shall be registered with the division according to rules made by the division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(10)]~~ (11) Before providing information requested under this section, the division shall give priority to criminal justice agencies needs.

~~[(11)]~~ (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created, maintained, or to which access is granted by the division or any information contained in a record created, maintained, or to which access is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.

(b) A person who discovers or becomes aware of any unauthorized use of records created or maintained, or to which access is granted by the division shall inform the commissioner and the director of the Utah Bureau of Criminal Identification of the unauthorized use.

~~1~~ ~~1~~ (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in Subsection (2)(b) may request that the division register fingerprints taken for the purpose of conducting ~~fa~~ current and future criminal background ~~check~~ checks under this section with:

(i) the WIN Database rap back system, or any successor system;

(ii) the ~~rap back system maintained by the Federal Bureau of Investigation~~ FBI Rap Back System; or

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(iii) a system maintained by the division.

(b) A qualifying entity or an entity described in Subsection (2)(b) may only make a request under Subsection (13)(a) if the entity:

(i) has the authority through state or federal statute or federal executive order;

(ii) obtains a signed waiver from the ~~person~~ individual whose fingerprints are being registered; and

(iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives notifications for individuals with whom the entity maintains an authorizing relationship.

~~(14)~~

(14) The division is authorized to submit fingerprints to the FBI Rap Back System to be retained in the FBI Rap Back System for the purpose of being searched by future submissions to the FBI Rap Back System, including latent fingerprint searches.

(15) (a) (i) The applicant fingerprint card fee under Subsection (2) is \$20.

(ii) The name check fee under Subsection (2) is \$15.

(iii) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

(iv) The fees described in this Subsection (~~14~~15)(a) remain in effect until changed by the ~~bureau~~ division through the process under Section 63J-1-504.

(b) Funds generated under this Subsection (~~14~~15) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.

(c) The ~~bureau~~ division may collect fees charged by an outside agency for services required under this section.

Section 2. Section **53A-1a-504** is amended to read:

53A-1a-504. Charter school application -- Applicants -- Contents -- Expansion.

(1) (a) An application to establish a charter school may be submitted by:

(i) an individual;

(ii) a group of individuals; or

(iii) a nonprofit legal entity organized under Utah law.

(b) An authorized charter school may apply under this chapter for a charter from another charter school authorizer.

(2) A charter school application shall include:

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- (a) the purpose and mission of the school;
- (b) except for a charter school authorized by a local school board, a statement that, after entering into a charter agreement, the charter school will be organized and managed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;
- (c) a description of the governance structure of the school, including:
 - (i) a list of the governing board members that describes the qualifications of each member; and
 - (ii) an assurance that the applicant shall, within 30 days of authorization, provide the authorizer with the results of a background check for each member;
- (d) a description of the target population of the school that includes:
 - (i) the projected maximum number of students the school proposes to enroll;
 - (ii) the projected school enrollment for each of the first three years of school operation;and
 - (iii) the ages or grade levels the school proposes to serve;
- (e) academic goals;
- (f) qualifications and policies for school employees, including policies that:
 - (i) [~~require completion of a~~ comply with the criminal background check [~~for teachers~~]
requirements described in Section 53A-1a-512.5;
 - (ii) require employee evaluations; and
 - (iii) address employment of relatives within the charter school;
- (g) a description of how the charter school will provide, as required by state and federal law, special education and related services;
- (h) for a public school converting to charter status, arrangements for:
 - (i) students who choose not to continue attending the charter school; and
 - (ii) teachers who choose not to continue teaching at the charter school;
- (i) a statement that describes the charter school's plan for establishing the charter school's facilities, including:
 - (i) whether the charter school intends to lease or purchase the charter school's facilities;and
 - (ii) financing arrangements;
 - (j) a market analysis of the community the school plans to serve;

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- (k) a capital facility plan;
- (l) a business plan;
- (m) other major issues involving the establishment and operation of the charter school;

and

- (n) the signatures of the governing board members of the charter school.

(3) A charter school authorizer may require a charter school application to include:

(a) the charter school's proposed:

- (i) curriculum;
- (ii) instructional program; or
- (iii) delivery methods;

(b) a method for assessing whether students are reaching academic goals, including, at a minimum, participation in the Utah Performance Assessment System for Students under Chapter 1, Part 6, Achievement Tests;

(c) a proposed calendar;

(d) sample policies;

(e) a description of opportunities for parental involvement;

(f) a description of the school's administrative, supervisory, or other proposed services that may be obtained through service providers; or

(g) other information that demonstrates an applicant's ability to establish and operate a charter school.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules regarding the expansion of a charter school, including establishing a satellite campus, that provide:

(a) requirements for a charter school to apply and qualify for expansion; and

(b) procedures and deadlines for the application process.

Section 3. Section **53A-1a-512.5** is amended to read:

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

The following individuals are required to submit to a criminal background check and ongoing monitoring as provided in Section [~~53A-3-410~~] 53A-15-1503:

(1) an employee of a charter school who does not hold a current Utah educator license issued by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and

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Professional Practices Act;

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

(3) a contract employee, as defined in Section ~~[53A-3-410]~~ 53A-15-1502, who works at a charter school~~[-];~~ and

(4) a charter school governing board member.

Section 4. Section **53A-1a-705** is amended to read:

53A-1a-705. Eligible private schools.

(1) To be eligible to enroll a scholarship student, a private school shall:

(a) have a physical location in Utah where the scholarship students attend classes and have direct contact with the school's teachers;

(b) (i) (A) obtain an audit and report from a licensed independent certified public accountant that conforms with the following requirements:

(I) the audit shall be performed in accordance with generally accepted auditing standards;

(II) the financial statements shall be presented in accordance with generally accepted accounting principles; and

(III) the audited financial statements shall be as of a period within the last 12 months;
or

(B) contract with a licensed independent certified public accountant to perform an agreed upon procedure as follows:

(I) the agreed upon procedure shall be to determine that the private school has adequate working capital to maintain operations for the first full year; and

(II) working capital shall be calculated by subtracting current liabilities from current assets; and

(ii) submit the audit report or report of the agreed upon procedure to the board when the private school applies to accept scholarship students;

(c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

(d) meet state and local health and safety laws and codes;

(e) disclose to the parent of each prospective student, before the student is enrolled, the special education services that will be provided to the student, including the cost of those

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services;

(f) (i) administer an annual assessment of each scholarship student's academic progress;

(ii) report the results of the assessment to the student's parent; and

(iii) make the results available to the assessment team evaluating the student pursuant to Subsection 53A-1a-704(6);

(g) employ or contract with teachers who:

(i) hold baccalaureate or higher degrees;

(ii) have at least three years of teaching experience in public or private schools; or

(iii) have the necessary special skills, knowledge, or expertise that qualifies them to provide instruction:

(A) in the subjects taught; and

(B) to the special needs students taught; ~~and~~

(h) require the following individuals to submit to a criminal background check and ongoing monitoring, in accordance with Section 53A-15-1503, as a condition for employment or appointment:

(i) an employee who does not hold a current Utah educator license issued by the board under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;

(ii) a contract employee; and

(iii) a volunteer who is given significant unsupervised access to a student in connection with the volunteer's assignment; and

~~(h)~~ (i) provide to parents the relevant credentials of the teachers who will be teaching their students.

(2) A private school is not eligible to enroll scholarship students if:

(a) the audit report submitted under Subsection (1)(b) contains a going concern explanatory paragraph; or

(b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows that the private school does not have adequate working capital to maintain operations for the first full year, as determined under Subsection (1)(b).

(3) A home school is not eligible to enroll scholarship students.

(4) Residential treatment facilities licensed by the state are not eligible to enroll

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scholarship students.

(5) A private school intending to enroll scholarship students shall submit an application to the board by May 1 of the school year preceding the school year in which it intends to enroll scholarship students.

(6) The board shall:

(a) approve a private school's application to enroll scholarship students, if the private school meets the eligibility requirements of this section; and

(b) make available to the public a list of the eligible private schools.

(7) An approved eligible private school that changes ownership shall submit a new application to the board and demonstrate that it continues to meet the eligibility requirements of this section.

Section 5. Section **53A-6-104.1** is amended to read:

53A-6-104.1. Reinstatement of a license.

(1) An educator who previously held a license and whose license has expired may have the license reinstated by:

(a) filing an application with the board on the form prescribed by the board;

(b) paying the fee required by Section 53A-6-105; and

(c) submitting to a criminal background check as required by Section [~~53A-6-401~~]
53A-15-1504.

(2) Upon successful completion of the criminal background check and verification that the applicant's previous license had not been revoked, suspended, or surrendered, the board shall reinstate the license.

(3) An educator whose license is reinstated may not be required to obtain professional development not required of other educators with the same number of years of experience, except as provided in Subsection (4).

(4) The principal of the school at which an educator whose license is reinstated is employed shall provide information and training, based on the educator's experience and education, that will assist the educator in performing the educator's assigned position.

(5) The procedures for reinstating a license as provided in this section do not apply to an educator's license that expires while the educator is employed in a position requiring the license.

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Section 6. Section **53A-6-104.5** is amended to read:

53A-6-104.5. Licensing by competency.

(1) A competency-based license to teach may be issued based on the demonstrated competence of a teacher as provided in this section.

(2) A local school board or charter school may request, and the State Board of Education shall grant, upon receipt of documentation from the local school board or charter school verifying the person's qualifications as specified in this section, a competency-based license to a person who meets the qualifications specified in this section and submits to a criminal background check as required in Section [~~53A-6-401~~] 53A-15-1504.

(3) A local school board or charter school may request a competency-based license if the candidate meets the following qualifications:

(a) a license candidate who teaches one or more core academic subjects in an elementary school shall:

(i) hold at least a bachelor's degree; and

(ii) have demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum;

(b) a license candidate who teaches one or more core academic subjects in a middle or secondary school shall:

(i) hold at least a bachelor's degree; and

(ii) have demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by:

(A) passing a rigorous state academic subject test in each of the academic subjects in which the teacher teaches; or

(B) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, or advanced certification or credentialing; or

(c) a license candidate who teaches subjects other than a core academic subject in an elementary, middle, or high school shall:

(i) hold a bachelor's degree, associate's degree, or skill certification; and

(ii) have skills, talents, or abilities, as evaluated by the employing entity, that make the

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person suited for the teaching position.

(4) A school district or charter school:

(a) shall monitor and assess the performance of each teacher holding a competency-based license; and

(b) may recommend that the competency-based license holder's training and assessment be reviewed by the Utah State Office of Education for a level 1 license.

Section 7. Section **53A-6-109** is amended to read:

53A-6-109. Substitute teachers.

(1) A substitute teacher need not hold a license to teach, but school districts are encouraged to hire licensed personnel as substitutes when available.

(2) A person must submit to a background check under Section [~~53A-3-410~~] 53A-15-1503 prior to employment as a substitute teacher.

(3) A teacher's position in the classroom may not be filled by an unlicensed substitute [~~teachers~~] teacher for more than a total of 20 days during any school year unless licensed personnel are not available.

(4) A person who is ineligible to hold a license for any reason other than professional preparation may not serve as a substitute teacher.

Section 8. Section **53A-6-306** is amended to read:

53A-6-306. Purpose, powers, and duties of UPPAC.

(1) UPPAC shall:

(a) adopt rules consistent with applicable law and board rules to carry out its responsibilities under this chapter;

(b) make recommendations to the board and professional organizations of educators:

(i) concerning standards of professional performance, competence, and ethical conduct for persons holding licenses issued by the board; and

(ii) for the improvement of the education profession;

(c) establish procedures for receiving and acting upon reports or allegations regarding immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of standards of ethical conduct, performance, or professional competence;

(d) investigate any allegation of sexual abuse of a student or a minor by an educator;

and

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(e) establish the manner in which hearings are conducted and reported, and recommendations are submitted to the board for its action.

(2) (a) UPPAC may conduct or authorize investigations relating to any matter before UPPAC.

(b) Those investigations shall be independent of and separate from any criminal investigation.

(c) In conducting an investigation UPPAC or an investigator operating under UPPAC authorization may:

(i) administer oaths and issue subpoenas which may be enforced through the state district courts;

(ii) receive any evidence related to an alleged offense, including sealed or expunged records released to the board under Section 77-40-109; and

(iii) where reasonable cause exists, initiate a criminal background check on a license holder.

(d) (i) A license holder shall receive written notice if a fingerprint check is required as a part of the background check.

(ii) Fingerprints of the individual shall be taken, and the Law Enforcement and Technical Services Division of the Department of Public Safety shall release the individual's full record, as shown on state, regional, and national records, to UPPAC.

(iii) UPPAC shall pay the cost of the background check except as provided under Section [~~53A-6-401~~] 53A-15-1504, and the money collected shall be credited to the Law Enforcement and Technical Services Division to offset its expenses.

(3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has committed a sexual offense against a minor child if the person has:

(a) after having had a reasonable opportunity to contest the allegation, been found pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor child;

(b) pled guilty to a reduced charge in the face of a charge of having committed a sexual offense against a minor child, entered a plea of no contest, entered into a plea in abeyance resulting in subsequent dismissal of such a charge, or failed to defend himself against such a charge when given reasonable opportunity to do so; or

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(c) voluntarily surrendered a license or certificate or allowed a license or certificate to lapse in the face of a charge of having committed a sexual offense against a minor child.

(4) In resolving a complaint UPPAC may:

(a) dismiss the complaint;

(b) issue a warning or reprimand;

(c) issue an order of probation requiring an educator to comply with specific conditions in order to retain a license;

(d) enter into a written agreement requiring an educator to comply with certain conditions;

(e) recommend board action such as revocation or suspension of a license or restriction or prohibition of licensure; or

(f) take other appropriate action.

(5) UPPAC may not:

(a) participate as a party in any dispute relating to negotiations between a school district or charter school and its educators;

(b) take action against an educator without giving the individual an opportunity for a fair hearing to contest the allegations upon which the action would be based; or

(c) take action against an educator unless it finds that the action or the failure of the educator to act impairs the educator's ability to perform the functions of the educator's position.

Section 9. Section **53A-6-401** is repealed and reenacted to read:

53A-6-401. Background checks.

In accordance with Section 53A-15-1504, the State Board of Education shall require a license applicant to submit to a criminal background check and ongoing monitoring as a condition for licensing.

Section 10. Section **53A-6-403** is amended to read:

53A-6-403. Office tie-in with the Criminal Investigations and Technical Services Division.

(1) The office shall:

(a) be an online terminal agency with the Department of Public Safety's Criminal Investigations and Technical Services Division under Section 53-10-108; and

(b) provide relevant information concerning current or prospective employees or

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volunteers upon request to other school officials as provided in Section 53A-6-402.

(2) The cost of the online service shall be borne by the entity making the inquiry[; ~~using funds available to the entity, which may include funds authorized under Section 53A-6-401~~].

Section 11. Section **53A-6-404** is amended to read:

53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.

(1) An applicant for a license, renewal of a license, or reinstatement of a license shall provide the administrator of teacher licensing with an affidavit, stating under oath the current status of any certificate, license, or other authorization required for a professional position in education, which the applicant holds or has held in any other jurisdiction.

(2) An applicant for a license who has held a teacher's license in any other jurisdiction or who graduated from an institution of higher education in another state shall also provide the administrator of teacher licensing with:

(a) a complete listing of the higher education institutions attended by the applicant, whether the applicant's enrollment or eligibility for completion of a program was terminated by the institution, and, if so, the reasons for termination;

(b) a complete list of prior school employers; and

(c) a release on a form provided by the administrator permitting the office to obtain records from other jurisdictions and from institutions of higher education attended by the applicant, including expunged or otherwise protected records, relating to any offense described substantially in the same language as in [~~Subsection 53A-6-401(5)~~] Section 53A-15-1506.

(3) If the applicant's certificate, license, or authorization as an educator in any other jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is currently not valid for any other reason, the office may not grant the requested license, renewal, or reinstatement until it has received confirmation from the administrator of professional certification in that jurisdiction that the applicant would be eligible for certification or licensure in that jurisdiction.

(4) The office may not withhold a license for the sole reason that the applicant would be ineligible for certification, licensure, or authorization in the jurisdiction referred to in Subsection (3) because of failure to meet current requirements in that jurisdiction relating to education, time in service, or residence.

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Section 12. Section **53A-15-1501** is enacted to read:

Part 15. Background Checks

53A-15-1501. Title.

This part is known as "Background Checks."

Section 13. Section **53A-15-1502** is enacted to read:

53A-15-1502. Definitions.

As used in this part:

(1) "Authorized entity" means an LEA, qualifying private school, or the State Board of Education that is authorized to request a background check and ongoing monitoring under this part.

(2) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(3) "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 the public or private school.

(4) "LEA" means a school district, charter school, or the Utah Schools for the Deaf and the Blind.

(5) (a) "License applicant" means an applicant for a license issued by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

(b) "License applicant" includes an applicant for reinstatement of an expired, lapsed, suspended, or revoked license.

(6) "Non-licensed employee" means an employee of an LEA or qualifying private school that does not hold a current Utah educator license issued by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

(7) "Personal identifying information" means:

(a) current name, former names, nicknames, and aliases;

(b) date of birth;

(c) address;

(d) telephone number;

(e) driver license number or other government-issued identification number;

(f) Social Security number; and

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(g) fingerprints.

(8) "Qualifying private school" means a private school that enrolls students under Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act.

(9) "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.

(10) "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

Section 14. Section **53A-15-1503** is enacted to read:

53A-15-1503. Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members.

(1) An LEA or qualifying private school shall:

(a) require the following individuals to submit to a criminal background check and ongoing monitoring as a condition for employment or appointment:

(i) a non-licensed employee;

(ii) a contract employee;

(iii) a volunteer who will be given significant unsupervised access to a student in connection with the volunteer's assignment; and

(iv) a charter school governing board member;

(b) collect the following from an individual required to submit to a background check under Subsection (1)(a):

(i) personal identifying information;

(ii) subject to Subsection (2), a fee described in Subsection 53-10-108(14); and

(iii) consent, on a form specified by the LEA or qualifying private school, for:

(A) an initial background check upon submission of the application; and

(B) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 53A-15-1505;

(c) submit the individual's personal identifying information, including fingerprints, to the bureau for:

(i) an initial background check; and

(ii) ongoing monitoring through registration with the systems described in Section

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53A-15-1505 if the results of the initial background check do not contain disqualifying criminal history information as determined by the LEA or qualifying private school in accordance with Section 53A-15-1506; and

(d) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA or qualifying private school only receives notifications for individuals with whom the LEA or qualifying private school maintains an authorizing relationship.

(2) An LEA or qualifying private school may not require an individual to pay the fee described in Subsection (1)(b)(ii) unless the individual:

(a) has passed an initial review; and

(b) is one of a pool of no more than five candidates for the position.

(3) By September 1, 2018, an LEA or qualifying private school shall:

(a) collect the information described in Subsection (1)(b) from individuals:

(i) who were employed or appointed prior to July 1, 2015; and

(ii) with whom the LEA or qualifying private school currently maintains an authorizing relationship; and

(b) submit the information to the bureau for ongoing monitoring through registration with the systems described in Section 53A-15-1505.

(4) An LEA or qualifying private school that receives criminal history information about a licensed educator under Subsection 53A-15-1504(5) shall assess the employment status of the licensed educator as provided in Section 53A-15-1506.

(5) An LEA or qualifying private school may establish a policy to exempt an individual described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if the individual is being temporarily employed or appointed.

Section 15. Section **53A-15-1504** is enacted to read:

53A-15-1504. Background checks for licensed educators.

The State Board of Education shall:

(1) require a license applicant to submit to a criminal background check and ongoing monitoring as a condition for licensing;

(2) collect the following from an applicant:

(a) personal identifying information;

(b) a fee described in Subsection 53-10-108(14); and

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(c) consent, on a form specified by the State Board of Education, for:

(i) an initial background check upon submission of the application;

(ii) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 53A-15-1505; and

(iii) disclosure of any criminal history information to the individual's employing LEA or qualifying private school;

(3) submit an applicant's personal identifying information, including fingerprints, to the bureau for:

(a) an initial background check; and

(b) ongoing monitoring through registration with the systems described in Section 53A-15-1505 if the results of the initial background check do not contain disqualifying criminal history information as determined by the State Board of Education in accordance with Section 53A-15-1506;

(4) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the board only receives notifications for individuals with whom the State Board of Education maintains an authorizing relationship;

(5) notify the employing LEA or qualifying private school upon receipt of any criminal history information reported on a licensed educator employed by the LEA or qualifying private school; and

(6) (a) collect the information described in Subsection (2) from individuals who were licensed prior to July 1, 2015, by the individual's next license renewal date; and

(b) submit the information to the bureau for ongoing monitoring through registration with the systems described in Section 53A-15-1505.

Section 16. Section **53A-15-1505** is enacted to read:

53A-15-1505. Bureau responsibilities.

The bureau shall:

(1) upon request from an authorized entity, register the fingerprints submitted by the authorized entity as part of a background check with:

(a) the WIN Database rap back system, or any successor system; and

(b) the rap back system maintained by the Federal Bureau of Investigation;

(2) notify an authorized entity when a new entry is made against an individual whose

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fingerprints are registered with the rap back systems described in Subsection (1) regarding:

(a) an alleged offense; or

(b) a conviction, including a plea in abeyance;

(3) assist authorized entities to identify the appropriate privacy risk mitigation strategy that is to be used to ensure that the authorized entity only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and

(4) collaborate with the State Board of Education to provide training to authorized entities on the notification procedures and privacy risk mitigation strategies described in this part.

Section 17. Section **53A-15-1506** is enacted to read:

53A-15-1506. Due process for accused individuals--Review of criminal history information.

(1) (a) In accordance with Section 53-10-108, an authorized entity shall provide an individual an opportunity to review and respond to any criminal history information received under this part.

(b) If an authorized entity decides to disqualify an individual as a result of criminal history information received under this part, an individual may request a review of:

(i) information received; and

(ii) the reasons for the disqualification.

(c) An authorized entity shall provide an individual described in Subsection (1)(b) with written notice of:

(i) the reasons for the disqualification; and

(ii) the individual's right to request a review of the disqualification.

(2) (a) An LEA or qualifying private school shall make decisions regarding criminal history information for the individuals subject to the background check requirements under Section 53A-15-1503 in accordance with:

(i) Subsection (3);

(ii) administrative procedures established by the LEA or qualifying private school; and

(iii) rules established by the State Board of Education.

(b) The State Board of Education shall make decisions regarding criminal history information for licensed educators in accordance with:

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(i) Subsection (3):

(ii) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

(iii) rules established by the State Board of Education.

(3) When making decisions regarding initial employment, initial licensing, or initial appointment for the individuals subject to background checks under this part, an authorized entity ~~may only consider the following matters to the extent that they are job-related for the individual~~ shall consider:

(a) any convictions, including pleas in abeyance;

(b) any matters involving a felony; and

(c) any matters involving an alleged:

(i) sexual offense;

(ii) class A misdemeanor drug offense;

(iii) offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(iv) class A misdemeanor property offense that is alleged to have occurred within the previous three years; and

(v) any other type of criminal offense, if more than one occurrence of the same type of offense is alleged to have occurred within the previous eight years.

Section 18. Section **53A-15-1507** is enacted to read:

53A-15-1507. Self-reporting requirement.

(1) Individuals subject to the background check requirements under this part shall self-report conviction, arrest, or offense information in accordance with rules established by the State Board of Education.

(2) An LEA shall report conviction, arrest, or offense information received from licensed educators under Subsection (1) to the State Board of Education in accordance with rules established by the State Board of Education.

Section 19. Section **53A-15-1508** is enacted to read:

53A-15-1508. Update criminal background check rules and policies.

On or before September 1, 2015:

(1) the board shall update the board's criminal background check rules consistent with this part; and

(2) an LEA shall update the LEA's criminal background check policies consistent with

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this part.

Section 20. Section **53A-15-1509** is enacted to read:

53A-15-1509. Training provided to authorized entities.

The board shall collaborate with the bureau to provide training to authorized entities on the provisions of this part.

Section 21. Section **53A-15-1510** is enacted to read:

53A-15-1510. Legislative audit.

After the conclusion of the 2018-2019 school year, [subject to the prioritization of the Legislative Audit Subcommittee](#), the Legislative Auditor General shall conduct a review and issue a report on the extent to which the criminal background check procedures and ongoing monitoring described in this part adequately detect and identify the criminal histories of individuals who are employed by or volunteering in public schools.

Section 22. Section **53A-29-104** is amended to read:

53A-29-104. Internship programs -- Criminal background checks.

Officers and employees of a cooperating employer who will be given significant unsupervised access to a student in connection with the student's activities as an intern shall be considered to be a volunteer [~~school workers solely~~] for purposes of criminal background checks under Section [~~53A-3-410~~] 53A-15-1503.

Section 23. Section **53B-16-404** is amended to read:

53B-16-404. Internship programs -- Criminal background checks.

An institution of higher education shall require an officer or employee of the institution or a cooperating employer, who will be given significant unsupervised access to a minor student in connection with the student's activities as an intern, to submit to a criminal background check on the same basis as a volunteer [~~school district workers~~] under Section [~~53A-3-410~~] 53A-15-1503.

Section 24. Section **78A-6-1105** is amended to read:

78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.

(1) (a) A person who has been adjudicated under this chapter may petition the court for the expungement of the person's juvenile court record and any related records in the custody of a state agency, if:

- (i) the person has reached 18 years of age; and

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(ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court or, if the person was committed to a secure youth corrections facility, one year from the date of the person's unconditional release from the custody of the Division of Juvenile Justice Services.

(b) The court may waive the requirements in Subsection (1)(a), if the court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include in the petition any agencies known or alleged to have any documents related to the offense for which expungement is being sought.

(d) The petitioner shall include with the petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of [~~Subsection~~] Section 53-10-108[~~(8)~~].

(e) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney.

(f) (i) Upon the filing of a petition, the court shall:

(A) set a date for a hearing;

(B) notify the county attorney or district attorney, and the agency with custody of the records at least 30 days prior to the hearing of the pendency of the petition; and

(C) notify the county attorney or district attorney, and the agency with records the petitioner is asking the court to expunge of the date of the hearing.

(ii) The court shall provide a victim with the opportunity to request notice of a petition for expungement. A victim shall receive notice of a petition for expungement at least 30 days prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a child or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered. The notice shall include a copy of the petition and statutes and rules applicable to the petition.

(2) (a) At the hearing, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, taking into consideration the petitioner's response to programs and treatment, the petitioner's

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behavior subsequent to adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related records contained in the Management Information System created by Section 62A-4a-1003 and the Licensing Information System created by Section 62A-4a-1005, if the court finds that:

(i) the petitioner has not, since the termination of the court's jurisdiction or ~~his~~ the petitioner's unconditional release from the Division of Juvenile Justice Services, been convicted of a:

(A) felony; or

(B) misdemeanor involving moral turpitude;

(ii) no proceeding involving a felony or misdemeanor is pending or being instituted against the petitioner; and

(iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

(3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.

(4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.

(5) The court may not expunge a juvenile court record if the record contains an adjudication of:

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

(6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78A-6-602 may petition the court for expungement of the person's

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record if the person:

- (i) has reached 18 years of age; and
- (ii) has completed the conditions of the nonjudicial adjustments.

(b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.

Section 25. **Repealer.**

This bill repeals:

Section **53A-3-410, Criminal background checks on school personnel -- Notice --**

Payment of costs -- Request for review.

Section 26. **Effective date.**

This bill takes effect on July 1, 2015.

†

Legislative Review Note

~~as of 1-12-15 10:27 AM~~

~~Office of Legislative Research and General Counsel}~~