

BACKGROUND CHECKS FOR STATE ACCOUNTANTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill enacts language related to background checks for certain public employees.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits the Division of Finance to require background checks or credit history reports of a public employee in a public funds position;
- ▶ classifies the background check or credit history report as a private record; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-201, as renumbered and amended by Laws of Utah 1993, Chapter 212

63G-2-302, as last amended by Laws of Utah 2014, Chapter 373

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

Section 1. Section **63A-3-201** is amended to read:



28 **63A-3-201. Appointment of accounting and other officers and employees by**
29 **director of the Division of Finance -- Delegation of powers and duties by director --**
30 **Background checks.**

31 (1) With the approval of the executive director, the director of the Division of Finance
32 shall appoint an accounting officer and other administrative officers that are necessary to
33 efficiently and economically perform the functions of the Division of Finance.

34 (2) The director of the Division of Finance may:

35 (a) organize the division and employ other assistants to discharge the functions of the
36 division;

37 (b) delegate to assistants, officers, and employees any of the powers and duties of the
38 office subject to his or her control and subject to any conditions he may prescribe; and

39 (c) delegate the powers and duties of the office only by written order filed with the
40 lieutenant governor.

41 (3) (a) As used in this Subsection (3):

42 (i) "Public employee" means a person employed by a state agency.

43 (ii) "Public funds" means money, funds, and accounts, regardless of the source from
44 which the money, funds, and accounts are derived, that are owned, held, or administered by a
45 state agency.

46 (iii) "Public funds position" means employment with a state agency that requires:

47 (A) physical or electronic access to public funds;

48 (B) performing internal control functions or accounting;

49 (C) creating reports on public funds; or

50 (D) using, operating, or accessing state systems that account for or help account for
51 public funds.

52 (iv) "State agency" means an executive branch:

53 (A) department;

54 (B) agency;

55 (C) board;

56 (D) commission;

57 (E) division;

58 (F) office; or

59 (G) state educational institution ~~H~~→ with the exception of an institution defined in
 59a Subsection 53B-1-102(1) ←~~H~~ .

60 (b) The Division of Finance may require that a public employee who applies for or
 61 holds a public funds position:

62 (i) submit a fingerprint card in a form acceptable to the division;

63 (ii) consent to a criminal background check by:

64 (A) the Federal Bureau of Investigation;

65 (B) the Utah Bureau of Criminal Identification; or

66 (C) another agency of any state that performs criminal background checks; or

67 (iii) consent to a credit history report, subject to the requirements of the Fair Credit

68 Reporting Act, 15 U.S.C. Sec. 1681 et seq.

69 (c) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah

70 Administrative Rulemaking Act, adopt rules to implement this section.

71 Section 2. Section **63G-2-302** is amended to read:

72 **63G-2-302. Private records.**

73 (1) The following records are private:

74 (a) records concerning an individual's eligibility for unemployment insurance benefits,
 75 social services, welfare benefits, or the determination of benefit levels;

76 (b) records containing data on individuals describing medical history, diagnosis,
 77 condition, treatment, evaluation, or similar medical data;

78 (c) records of publicly funded libraries that when examined alone or with other records
 79 identify a patron;

80 (d) records received by or generated by or for:

81 (i) the Independent Legislative Ethics Commission, except for:

82 (A) the commission's summary data report that is required under legislative rule; and

83 (B) any other document that is classified as public under legislative rule; or

84 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
 85 unless the record is classified as public under legislative rule;

86 (e) records received by, or generated by or for, the Independent Executive Branch

87 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review

88 of Executive Branch Ethics Complaints;

89 (f) records received or generated for a Senate confirmation committee concerning

90 character, professional competence, or physical or mental health of an individual:

91 (i) if, prior to the meeting, the chair of the committee determines release of the records:

92 (A) reasonably could be expected to interfere with the investigation undertaken by the
93 committee; or

94 (B) would create a danger of depriving a person of a right to a fair proceeding or
95 impartial hearing; and

96 (ii) after the meeting, if the meeting was closed to the public;

97 (g) employment records concerning a current or former employee of, or applicant for
98 employment with, a governmental entity that would disclose that individual's home address,
99 home telephone number, Social Security number, insurance coverage, marital status, or payroll
100 deductions;

101 (h) records or parts of records under Section 63G-2-303 that a current or former
102 employee identifies as private according to the requirements of that section;

103 (i) that part of a record indicating a person's Social Security number or federal
104 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
105 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

106 (j) that part of a voter registration record identifying a voter's:

107 (i) driver license or identification card number;

108 (ii) Social Security number, or last four digits of the Social Security number;

109 (iii) email address; or

110 (iv) date of birth;

111 (k) a voter registration record that is classified as a private record by the lieutenant
112 governor or a county clerk under Subsection 20A-2-104(4)(f);

113 (l) a record that:

114 (i) contains information about an individual;

115 (ii) is voluntarily provided by the individual; and

116 (iii) goes into an electronic database that:

117 (A) is designated by and administered under the authority of the Chief Information
118 Officer; and

119 (B) acts as a repository of information about the individual that can be electronically
120 retrieved and used to facilitate the individual's online interaction with a state agency;

- 121 (m) information provided to the Commissioner of Insurance under:
- 122 (i) Subsection [31A-23a-115\(2\)\(a\)](#);
- 123 (ii) Subsection [31A-23a-302\(3\)](#); or
- 124 (iii) Subsection [31A-26-210\(3\)](#);
- 125 (n) information obtained through a criminal background check under Title 11, Chapter
- 126 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 127 (o) information provided by an offender that is:
- 128 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
- 129 Offender Registry; and
- 130 (ii) not required to be made available to the public under Subsection [77-41-110\(4\)](#);
- 131 (p) a statement and any supporting documentation filed with the attorney general in
- 132 accordance with Section [34-45-107](#), if the federal law or action supporting the filing involves
- 133 homeland security;
- 134 (q) electronic toll collection customer account information received or collected under
- 135 Section [72-6-118](#) and customer information described in Section [17B-2a-815](#) received or
- 136 collected by a public transit district, including contact and payment information and customer
- 137 travel data;
- 138 (r) an email address provided by a military or overseas voter under Section
- 139 [20A-16-501](#);
- 140 (s) a completed military-overseas ballot that is electronically transmitted under Title
- 141 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- 142 (t) records received by or generated by or for the Political Subdivisions Ethics Review
- 143 Commission established in Section [11-49-201](#), except for:
- 144 (i) the commission's summary data report that is required in Section [11-49-202](#); and
- 145 (ii) any other document that is classified as public in accordance with Title 11, Chapter
- 146 49, Political Subdivisions Ethics Review Commission; [~~and~~]
- 147 (u) a record described in Subsection [53A-11a-203\(3\)](#) that verifies that a parent was
- 148 notified of an incident or threat[-]; and
- 149 (v) a criminal background check or credit history report conducted in accordance with
- 150 Section [63A-3-201](#).
- 151 (2) The following records are private if properly classified by a governmental entity:

152 (a) records concerning a current or former employee of, or applicant for employment
153 with a governmental entity, including performance evaluations and personal status information
154 such as race, religion, or disabilities, but not including records that are public under Subsection
155 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

156 (b) records describing an individual's finances, except that the following are public:

157 (i) records described in Subsection 63G-2-301(2);

158 (ii) information provided to the governmental entity for the purpose of complying with
159 a financial assurance requirement; or

160 (iii) records that must be disclosed in accordance with another statute;

161 (c) records of independent state agencies if the disclosure of those records would
162 conflict with the fiduciary obligations of the agency;

163 (d) other records containing data on individuals the disclosure of which constitutes a
164 clearly unwarranted invasion of personal privacy;

165 (e) records provided by the United States or by a government entity outside the state
166 that are given with the requirement that the records be managed as private records, if the
167 providing entity states in writing that the record would not be subject to public disclosure if
168 retained by it; and

169 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
170 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
171 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

172 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
173 records, statements, history, diagnosis, condition, treatment, and evaluation.

174 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
175 doctors, or affiliated entities are not private records or controlled records under Section
176 63G-2-304 when the records are sought:

177 (i) in connection with any legal or administrative proceeding in which the patient's
178 physical, mental, or emotional condition is an element of any claim or defense; or

179 (ii) after a patient's death, in any legal or administrative proceeding in which any party
180 relies upon the condition as an element of the claim or defense.

181 (c) Medical records are subject to production in a legal or administrative proceeding
182 according to state or federal statutes or rules of procedure and evidence as if the medical

183 records were in the possession of a nongovernmental medical care provider.

Legislative Review Note
as of 2-2-15 9:20 AM

Office of Legislative Research and General Counsel