

**BACKGROUND CHECKS FOR STATE ACCOUNTANTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Deidre M. Henderson**

House Sponsor: Steve Eliason

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**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

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

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

**63A-3-201. Appointment of accounting and other officers and employees by 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 with the exception of an institution defined in  
60 Subsection 53B-1-102(1).

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

- 63           (i) submit a fingerprint card in a form acceptable to the division;
- 64           (ii) consent to a criminal background check by:
  - 65           (A) the Federal Bureau of Investigation;
  - 66           (B) the Utah Bureau of Criminal Identification; or
  - 67           (C) another agency of any state that performs criminal background checks; or
- 68           (iii) consent to a credit history report, subject to the requirements of the Fair Credit  
69 Reporting Act, 15 U.S.C. Sec. 1681 et seq.

70           (c) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah  
71 Administrative Rulemaking Act, adopt rules to implement this section.

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

73           **63G-2-302. Private records.**

- 74           (1) The following records are private:
  - 75           (a) records concerning an individual's eligibility for unemployment insurance benefits,
  - 76 social services, welfare benefits, or the determination of benefit levels;
  - 77           (b) records containing data on individuals describing medical history, diagnosis,
  - 78 condition, treatment, evaluation, or similar medical data;
  - 79           (c) records of publicly funded libraries that when examined alone or with other records
  - 80 identify a patron;
  - 81           (d) records received by or generated by or for:
    - 82           (i) the Independent Legislative Ethics Commission, except for:
    - 83           (A) the commission's summary data report that is required under legislative rule; and
    - 84           (B) any other document that is classified as public under legislative rule; or
    - 85           (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,

86 unless the record is classified as public under legislative rule;

87 (e) records received by, or generated by or for, the Independent Executive Branch  
88 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review  
89 of Executive Branch Ethics Complaints;

90 (f) records received or generated for a Senate confirmation committee concerning  
91 character, professional competence, or physical or mental health of an individual:

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

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

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

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

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

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

104 (i) that part of a record indicating a person's Social Security number or federal  
105 employer identification number if provided under Section 31A-23a-104, 31A-25-202,  
106 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

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

108 (i) driver license or identification card number;

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

110 (iii) email address; or

111 (iv) date of birth;

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

- 114 (l) a record that:
- 115 (i) contains information about an individual;
- 116 (ii) is voluntarily provided by the individual; and
- 117 (iii) goes into an electronic database that:
- 118 (A) is designated by and administered under the authority of the Chief Information
- 119 Officer; and
- 120 (B) acts as a repository of information about the individual that can be electronically
- 121 retrieved and used to facilitate the individual's online interaction with a state agency;
- 122 (m) information provided to the Commissioner of Insurance under:
- 123 (i) Subsection 31A-23a-115(2)(a);
- 124 (ii) Subsection 31A-23a-302(3); or
- 125 (iii) Subsection 31A-26-210(3);
- 126 (n) information obtained through a criminal background check under Title 11, Chapter
- 127 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 128 (o) information provided by an offender that is:
- 129 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
- 130 Offender Registry; and
- 131 (ii) not required to be made available to the public under Subsection 77-41-110(4);
- 132 (p) a statement and any supporting documentation filed with the attorney general in
- 133 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 134 homeland security;
- 135 (q) electronic toll collection customer account information received or collected under
- 136 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
- 137 collected by a public transit district, including contact and payment information and customer
- 138 travel data;
- 139 (r) an email address provided by a military or overseas voter under Section
- 140 20A-16-501;
- 141 (s) a completed military-overseas ballot that is electronically transmitted under Title

142 20A, Chapter 16, Uniform Military and Overseas Voters Act;

143 (t) records received by or generated by or for the Political Subdivisions Ethics Review  
144 Commission established in Section 11-49-201, except for:

145 (i) the commission's summary data report that is required in Section 11-49-202; and

146 (ii) any other document that is classified as public in accordance with Title 11, Chapter  
147 49, Political Subdivisions Ethics Review Commission; ~~and~~

148 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was  
149 notified of an incident or threat[-]; and

150 (v) a criminal background check or credit history report conducted in accordance with  
151 Section 63A-3-201.

152 (2) The following records are private if properly classified by a governmental entity:

153 (a) records concerning a current or former employee of, or applicant for employment  
154 with a governmental entity, including performance evaluations and personal status information  
155 such as race, religion, or disabilities, but not including records that are public under Subsection  
156 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

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

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

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

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

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

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

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

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

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

175 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
176 doctors, or affiliated entities are not private records or controlled records under Section  
177 63G-2-304 when the records are sought:

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

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

182 (c) Medical records are subject to production in a legal or administrative proceeding  
183 according to state or federal statutes or rules of procedure and evidence as if the medical  
184 records were in the possession of a nongovernmental medical care provider.