

VOLUNTEER REGISTRY

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill creates the Utah Volunteer Registry and provides for direction and oversight.

Highlighted Provisions:

This bill:

- directs the Utah Commission on Service and Volunteerism to create a volunteer registry that will provide a central point for organizations to determine whether an individual who wants to volunteer has had a background check;
- provides criteria for an individual to be placed on the registry;
- creates a review board to address denials, suspensions, and removals from the registry; and
- provides rulemaking authority.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

9-1-809, as last amended by Laws of Utah 2013, Chapter 38

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

ENACTS:



- 28 **9-1-901**, Utah Code Annotated 1953
- 29 **9-1-902**, Utah Code Annotated 1953
- 30 **9-1-903**, Utah Code Annotated 1953
- 31 **9-1-904**, Utah Code Annotated 1953
- 32 **9-1-905**, Utah Code Annotated 1953
- 33 **9-1-906**, Utah Code Annotated 1953
- 34 **9-1-907**, Utah Code Annotated 1953
- 35 **9-1-908**, Utah Code Annotated 1953
- 36 **9-1-909**, Utah Code Annotated 1953
- 37 **9-1-910**, Utah Code Annotated 1953



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

40 Section 1. Section **9-1-809** is amended to read:

41 **9-1-809. Commission duties.**

42 (1) The commission shall:

43 (a) assist in the selection, development, and oversight of programs funded and
44 established by the act;

45 (b) pursue opportunities for sustainable and high-impact community service;

46 (c) develop and annually update a three-year community service plan for the state,
47 including the establishment of state priorities; [~~and~~]

48 (d) stimulate increased community awareness of the impact of volunteer service in the
49 state[-]; and

50 (e) create and oversee the Utah Volunteer Registry created in Part 9, Utah Volunteer
51 Registry.

52 (2) (a) The commission may, subject to Title 63J, Chapter 5, Federal Funds Procedures
53 Act, receive and accept federal funds, and may receive and accept private gifts, donations, or
54 funds from any source.

55 (b) Money received under this Subsection (2) shall be deposited with the state and shall
56 be available to the commission to carry out the purposes of this part.

57 Section 2. Section **9-1-901** is enacted to read:

58 **Part 9. Utah Volunteer Registry**

59 **9-1-901. Title.**

60 This part is known as the "Utah Volunteer Registry."

61 Section 3. Section **9-1-902** is enacted to read:

62 **9-1-902. Definitions.**

63 As used in this part:

64 (1) "Board" means the Volunteer Registry Review Board created in Section [9-1-908](#).

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

67 (3) "Commission" means the Utah Commission on Service and Volunteerism within
68 the Department of Heritage and Arts, created in Section [9-1-803](#).

69 (4) "Department" means the Department of Heritage and Arts created in Section
70 [9-1-201](#).

71 (5) "Organization" means any business or service organization, including a public
72 entity, that uses volunteers to assist in serving vulnerable populations.

73 (6) "Personal identifying information" means:

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

75 (b) date of birth;

76 (c) address;

77 (d) telephone number;

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

79 (f) Social Security number; and

80 (g) fingerprints.

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

84 (8) "Registry" means the Utah Volunteer Registry created in accordance with this part.

85 (9) "Volunteer" means an individual performing services for an organization who does
86 not receive anything of value from that organization for those services except reimbursements.

87 (10) "Vulnerable populations" include children age 17 or younger, persons aged 60 and
88 older, and individuals with disabilities.

89 (11) "WIN database" means the Western Identification Network database that consists

90 of eight western states sharing one electronic fingerprint database.

91 Section 4. Section **9-1-903** is enacted to read:

92 **9-1-903. Commission authority to conduct background checks -- Privacy risk**
93 **mitigation.**

94 The commission:

95 (1) is authorized to request background checks and ongoing monitoring in accordance
96 with Section 53-10-108 for persons applying for placement on the registry; and

97 (2) shall identify an appropriate privacy risk mitigation strategy that will be used to
98 ensure that the commission only receives notifications for individuals with whom the
99 commission maintains an authorizing relationship.

100 Section 5. Section **9-1-904** is enacted to read:

101 **9-1-904. Creation -- Application -- Disqualifying factors.**

102 (1) There is created the Utah Volunteer Registry for individuals who volunteer for
103 service or business organizations that require background checks. Application for placement
104 on the registry is voluntary.

105 (2) To apply for placement on the registry an individual shall provide, along with an
106 application to the commission:

107 (a) personal identifying information;

108 (b) an application fee of \$30;

109 (c) the fees described in Subsection 53-10-108(14) for a background check and
110 registration in the rap back systems; and

111 (d) consent for:

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

113 (ii) registration of the individual's fingerprints with the bureau, WIN database, and the
114 Federal Bureau of Investigation; and

115 (iii) retention of the individual's personal identifying information for ongoing
116 monitoring and future submissions to the bureau, WIN database, and the Federal Bureau of
117 Investigation rap back systems.

118 (3) Pending review by the board created in Section 9-1-908, the following entries on a
119 background check may disqualify a person from receiving a registered volunteer card:

120 (a) any convictions, including pleas in abeyance;

- 121 (b) any matters involving a felony; and
- 122 (c) any matters involving an alleged:
- 123 (i) sexual offense;
- 124 (ii) class A misdemeanor drug offense;
- 125 (iii) offense under Title 76, Chapter 5, Offenses Against the Person;
- 126 (iv) class A misdemeanor property offense that is alleged to have occurred within the
- 127 previous three years; and
- 128 (v) any other type of criminal offense, if more than one occurrence of the same type of
- 129 offense is alleged to have occurred within the previous eight years.

130 Section 6. Section **9-1-905** is enacted to read:

131 **9-1-905. Bureau responsibilities.**

132 The bureau shall:

133 (1) upon request from the commission, register the fingerprints submitted as part of a

134 background check with:

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

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

137 (2) notify the commission when a new entry is made against an individual whose

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

139 (a) an alleged offense; or

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

141 (3) assist the commission to identify the appropriate privacy risk mitigation strategy

142 that is to be used to ensure that the commission only receives notifications for individuals with

143 whom the commission maintains an authorizing relationship; and

144 (4) collaborate with the commission to provide training on the notification procedures

145 and privacy risk mitigation strategies described in this chapter.

146 Section 7. Section **9-1-906** is enacted to read:

147 **9-1-906. Registered volunteer card -- Issuance -- Denial -- Suspension --**

148 **Revocation.**

149 (1) An applicant with none of the disqualifying factors in Section [9-1-904](#) shall be

150 issued a registered volunteer card within 60 days of application.

151 (2) The card shall be valid for a period of five years and have on its face:

- 152 (a) the name and address of the volunteer;
- 153 (b) a recent photo of the volunteer at the time of issuance;
- 154 (c) an individual number; and
- 155 (d) an expiration date.
- 156 (3) If an individual is flagged through subsequent checks by the bureau the individual's
- 157 registration may be suspended. If suspended, the individual's card shall be suspended, and a
- 158 notation made in the registry, until the reason for the flag is remedied.

159 (4) If an individual's card is subsequently revoked, the individual shall be removed
160 from the registry and the card is void.

161 (5) The listing of an individual on the registry and the issuance of a registered
162 volunteer card merely signify that:

- 163 (a) a background check has been completed within the previous five years; and
- 164 (b) ongoing checks through the rap back systems have discovered no activity that
- 165 would disqualify the individual from placement on the registry.

166 Section 8. Section **9-1-907** is enacted to read:

167 **9-1-907. Web portal.**

168 (1) The commission shall maintain a web portal listing volunteers who have been
169 screened and issued a registered volunteer card. The portal shall have a search feature to
170 simplify verification.

171 (2) An organization that has paid the fee provided in Subsection (3) may verify the
172 validity of a volunteer's card by accessing the web portal and providing the potential or current
173 volunteer's:

- 174 (a) card number;
- 175 (b) name; and
- 176 (c) date of birth.

177 (3) The commission may charge a yearly fee, not to exceed \$50, to any organization
178 requesting access to the web portal.

179 (4) Funds generated under this section and Section [9-1-904](#) shall be deposited into the
180 General Fund as a dedicated credit by the commission to cover the costs incurred in creating
181 and maintaining the registry.

182 Section 9. Section **9-1-908** is enacted to read:

183 **9-1-908. Volunteer Registry Review Board.**

184 (1) There is created the Volunteer Registry Review Board to review denials,
185 suspensions, and removals from the registry.

186 (2) The board shall consist of:

187 (a) two members of the Utah Commission on Service and Volunteerism; and

188 (b) three at-large members with a background in criminal justice, appointed by the
189 executive director of the department.

190 (3) A member may not receive compensation or benefits for the member's service, but
191 may receive per diem and travel expenses in accordance with:

192 (a) Section [63A-3-106](#);

193 (b) Section [63A-3-107](#); and

194 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
195 [63A-3-107](#).

196 Section 10. Section **9-1-909** is enacted to read:

197 **9-1-909. Board review of adverse action.**

198 (1) (a) In accordance with Section [53-10-108](#), the commission shall provide an
199 individual an opportunity to review and respond to any criminal history information received
200 under this chapter.

201 (b) If the commission denies an individual's application, or suspends or revokes an
202 individual's card as a result of criminal history information received under this part, the
203 commission shall provide the individual with written notice of:

204 (i) the reasons for the action; and

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

206 (2) The board shall consider all mitigating factors presented by the individual.

207 (3) The decision of the board is final.

208 Section 11. Section **9-1-910** is enacted to read:

209 **9-1-910. Rulemaking authority.**

210 The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
211 Administrative Rulemaking Act, that establish:

212 (1) criteria for background checks for volunteers, including a list of offenses or actions
213 for which a person may be denied, suspended, or removed from the registry, as long as the

214 offenses or actions fall within the criteria in Subsection 9-1-904(3);

215 (2) criteria for organizations to access the registry created in this part;

216 (3) hearing requirements for the board created in Section 9-1-908; and

217 (4) criteria for reinstatement of an individual on the registry.

218 Section 12. Section **53-10-108** is amended to read:

219 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
220 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
221 **-- Missing children records -- Penalty for misuse of records.**

222 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

252 ~~[(2)]~~ (3) An agreement under Subsection ~~[(1)]~~ (2)(f) or ~~[(1)]~~ (2)(h) shall specifically
253 authorize access to data, limit the use of data to research, evaluative, or statistical purposes,
254 preserve the anonymity of individuals to whom the information relates, and ensure the
255 confidentiality and security of the data.

256 ~~[(3)]~~ (4) (a) Before requesting information under Subsection ~~[(1)]~~ (2)(g), a qualifying
257 entity must obtain a signed waiver from the person whose information is requested.

258 (b) The waiver must notify the signee:

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

260 (ii) who will see the information; and

261 (iii) how the information will be used.

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

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

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

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

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

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

273 (ii) respond to any information received.

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

276 ~~[(g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.]~~
277 ~~[(ii) The name check fee under Subsection (1)(g) is \$15.]~~
278 ~~[(iii) These fees remain in effect until changed by the division through the process~~
279 ~~under Section [63J-1-504](#).]~~

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

283 ~~[(h)]~~ (g) The division or its employees are not liable for defamation, invasion of
284 privacy, negligence, or any other claim in connection with the contents of information
285 disseminated under Subsection ~~[(+)]~~ (2)(g).

286 ~~[(4)]~~ (5) (a) Any criminal history record information obtained from division files may
287 be used only for the purposes for which it was provided and may not be further disseminated,
288 except under Subsection ~~[(4)]~~ (5)(b), (c), or (d).

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

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

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

301 ~~[(5)]~~ (6) The division may not disseminate criminal history record information to
302 qualifying entities under Subsection ~~[(+)]~~ (2)(g) regarding employment background checks if
303 the information is related to charges:

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

307 ~~[(6)]~~ (7) (a) This section does not preclude the use of the division's central computing
308 facilities for the storage and retrieval of criminal history record information.

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

311 ~~[(7)]~~ (8) Direct access through remote computer terminals to criminal history record
312 information in the division's files is limited to those agencies authorized by the commissioner
313 under procedures designed to prevent unauthorized access to this information.

314 ~~[(8)]~~ (9) (a) The commissioner shall establish procedures to allow an individual right
315 of access to review and receive a copy of the individual's criminal history report.

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

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

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

324 ~~[(9)]~~ (10) The private security agencies as provided in Subsection ~~[(1)]~~ (2)(f)(ii):

325 (a) shall be charged for access; and

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

328 ~~[(10)]~~ (11) Before providing information requested under this section, the division
329 shall give priority to criminal justice agencies needs.

330 ~~[(11)]~~ (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally
331 access, use, disclose, or disseminate a record created, maintained, or to which access is granted
332 by the division or any information contained in a record created, maintained, or to which access
333 is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation,
334 or policy of a governmental entity.

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

338 unauthorized use.

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

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

343 (ii) the rap back system maintained by the Federal Bureau of Investigation; or

344 (iii) a system maintained by the division.

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

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

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

349 and

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

352 (14) (a) (i) The applicant fingerprint card fee is \$20.

353 (ii) The name check fee is \$15.

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

355 (iv) The fees described in this Subsection (14)(a) remain in effect until changed by the
356 bureau through the process under Section [63J-1-504](#).

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

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

362 **Section 13. Effective date.**

363 This bill takes effect on January 1, 2016.

Legislative Review Note
as of 2-13-15 11:41 AM

Office of Legislative Research and General Counsel