

HB0069S01 compared with HB0069

~~{deleted text}~~ shows text that was in HB0069 but was deleted in HB0069S01.

Inserted text shows text that was not in HB0069 but was inserted into HB0069S01.

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Representative Stephen G. Handy proposes the following substitute bill:

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{enacts}~~ ratifies the ~~{Utah}~~ National Crime Prevention and Privacy Compact.

Highlighted Provisions:

This bill:

- ▶ allows Utah to join the National Crime Prevention and Privacy Compact; ~~{~~
- ▶ ~~provides definitions;}~~ and
- ▶ permits Utah to share information with other states and the federal government relating to background checks and criminal histories; ~~{~~
- ▶ ~~creates a process for Utah to request records from the FBI and other states that are parties to the compact;~~
- ▶ ~~designates a compact council to administer the compact;~~
- ▶ ~~provides for adjudication of disputes between member parties; and~~

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~~sets requirements for withdrawal from the compact.~~

~~};~~

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

~~{53-19-101}~~53-10-115, Utah Code Annotated 1953

~~{ 53-19-102, Utah Code Annotated 1953~~

~~53-19-103, Utah Code Annotated 1953~~

~~53-19-104, Utah Code Annotated 1953~~

~~53-19-105, Utah Code Annotated 1953~~

~~53-19-106, Utah Code Annotated 1953~~

~~53-19-107, Utah Code Annotated 1953~~

~~53-19-108, Utah Code Annotated 1953~~

~~53-19-109, Utah Code Annotated 1953~~

~~53-19-110, Utah Code Annotated 1953~~

~~53-19-111, Utah Code Annotated 1953~~

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

Section 1. Section ~~{53-19-101}~~53-10-115 is enacted to read:

~~{CHAPTER 19. UTAH CRIME PREVENTION AND PRIVACY COMPACT~~

~~{ 53-19-101}53-10-115. { Title -- Purpose:~~

~~(1) This chapter is known as the "Utah} National Crime Prevention and Privacy Compact{."~~

~~(2) (a) This compact organizes an electronic information sharing system among the federal government and the states to exchange} ratification and implementation.~~

~~(1) To facilitate the interstate exchange of criminal history {records}information for noncriminal justice purposes { authorized by federal or state law}, {such as}including background checks for {governmental licensing and employment.~~

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~~_____ (b) Under this compact, the FBI and the party states agree to maintain detailed databases of their respective~~ licensing and screening of employees and volunteers, the National Crime Prevention and Privacy Compact, 42 U.S.C. 14616, is ratified and incorporated by reference as law in this state.

~~_____ (2) The division is the central repository of criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.~~

~~_____ (3) The purpose of this compact is to:~~

~~_____ (a) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state~~ for purposes of the compact and shall do all things necessary or incidental to carrying out the compact.

~~_____ (3) The director, or director's designee, is the state's compact officer and shall administer the compact within the state.~~

~~_____ (4) The division may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and establish procedures for the cooperative exchange of criminal history records for noncriminal justice uses;~~

~~_____ (b) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Section 53-19-106;~~

~~_____ (c) require party states to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and~~ between the state, other state governments, and with the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Section 53-19-106;

~~_____ (d) provide for the establishment of a council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for use in noncriminal justice purposes; and~~

~~_____ (e) require the FBI and each party state to adhere to III System standards concerning~~

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~~record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of the records:~~

~~Section 2. Section 53-19-102 is enacted to read:~~

~~53-19-102. Definitions:~~

~~As used in this compact:~~

~~(1) "Attorney general" means the attorney general of the United States:~~

~~(2) "Compact officer" means:~~

~~(a) with respect to the federal government, an official designated by the director of the FBI; and~~

~~(b) with respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository:~~

~~(3) "Council" means the compact council established under Section 53-19-106:~~

~~(4) "Criminal history record repository" means the state agency designated by the governor, appropriate executive official, or the Legislature of a state to perform centralized recordkeeping functions for criminal history records and services in the state:~~

~~(5) (a) "Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any dispositions, including acquittal, sentencing, correctional supervision, or release:~~

~~(b) "Criminal history records" does not include identification information such as fingerprint records if the information does not indicate involvement of the individual with the criminal justice system:~~

~~(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and background checks.~~

(5) The compact and this section do not affect the duties and responsibilities of the division under other provisions of this chapter regarding the dissemination of criminal history records within the state.

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~~{ (7) "Criminal justice agency" means:~~

~~— (a) the courts;~~

~~— (b) any governmental agency or subunit of a governmental agency that:~~

~~— (i) performs the administration of criminal justice pursuant to a statute or executive order; and~~

~~— (ii) allocates a substantial part of its annual budget to the administration of criminal justice; and~~

~~— (c) includes federal and state inspectors general offices.~~

~~— (8) "Criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.~~

~~— (9) "Criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.~~

~~— (10) "Direct access" means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.~~

~~— (11) "Executive order" means an order of the president of the United States or the chief executive officer of a state that has the force of law and is promulgated in accordance with applicable law.~~

~~— (12) "FBI" means the Federal Bureau of Investigation.~~

~~— (13) "Interstate Identification Index System" or "III System":~~

~~— (a) means the cooperative federal-state system for the exchange of criminal history records; and~~

~~— (b) includes the National Identification Index, the National Fingerprint File, and, to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.~~

~~— (14) "National Fingerprint File" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.~~

~~— (15) "National Identification Index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects~~

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~~about whom there are criminal history records in the HI System:~~

~~—— (16) "National indices" means the National Identification Index and the National Fingerprint File:~~

~~—— (17) "Noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances:~~

~~—— (18) "Nonparty state" means a state that has not ratified this compact:~~

~~—— (19) "Party state" means a state that has ratified this compact:~~

~~—— (20) "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the HI System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations of names, numbers, and nonunique identification characteristics may not constitute positive identification:~~

~~—— (21) "Sealed record information" means:~~

~~—— (a) with respect to adults, that portion of a record that is:~~

~~—— (i) not available for criminal justice uses;~~

~~—— (ii) not supported by fingerprints or other accepted means of positive identification; or~~

~~—— (iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and~~

~~—— (b) with respect to juveniles, whatever each state determines is a sealed record under each state's own law and procedure:~~

~~—— (22) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico:~~

~~—— Section 3. Section 53-19-103 is enacted to read:~~

~~—— **53-19-103. Responsibilities of compact parties -- FBI responsibilities -- State responsibilities -- Compliance -- Maintenance:**~~

~~—— (1) The director of the FBI shall:~~

~~—— (a) appoint an FBI compact officer who shall:~~

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~~—— (i) administer this compact within the Department of Justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Section 53-19-105;~~

~~—— (ii) ensure that compact provisions and rules, procedures, and standards prescribed by the council under Section 53-19-106 are complied with by the Department of Justice and the federal agencies and other agencies and organizations referred to in Section 53-19-103; and~~

~~—— (iii) regulate the use of records received by means of the III System from party states when the records are supplied by the FBI directly to other federal agencies;~~

~~—— (b) provide to federal agencies and to state criminal history record repositories criminal history records maintained in the FBI's database for the noncriminal justice purposes described in Section 53-19-104, including:~~

~~—— (i) information from nonparty states; and~~

~~—— (ii) information from party states that is available from the FBI through the III System, but is not available from the party state through the III System;~~

~~—— (c) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Section 53-19-104 and ensure that the exchange of those records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and~~

~~—— (d) modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Section 53-19-105.~~

~~—— (2) Each party state shall:~~

~~—— (a) appoint a compact officer who shall:~~

~~—— (i) administer this compact within that state;~~

~~—— (ii) ensure that compact provisions and rules, procedures, and standards established by the council under Section 53-19-106 are complied with in the state; and~~

~~—— (iii) regulate the in-state use of records received by means of the III System from the FBI or from other party states;~~

~~—— (b) establish and maintain a criminal history record repository, which shall provide:~~

~~—— (i) information and records for the National Identification Index and the National Fingerprint File; and~~

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~~—— (ii) the state's III System-indexed criminal history records for noncriminal justice purposes described in Section 53-19-104;~~

~~—— (c) participate in the National Fingerprint File; and~~

~~—— (d) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this compact.~~

~~—— (3) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III System rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.~~

~~—— (4) (a) Use of the III System for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.~~

~~—— (b) Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.~~

~~—— Section 4. Section 53-19-104 is enacted to read:~~

~~—— **53-19-104. Authorized record disclosures -- Criminal history record repositories -- Procedures:**~~

~~—— (1) To the extent authorized by 5 U.S.C. Sec. 552(a), the FBI shall provide on request criminal history records, excluding sealed records, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.~~

~~—— (2) The FBI, to the extent authorized by 5 U.S.C. Sec. 552(a) and state criminal history record repositories, shall provide criminal history records, excluding sealed records, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.~~

~~—— (3) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact, and with rules, procedures, and standards established by the council under Section 53-19-106, which procedures shall protect the accuracy and privacy of the records, and~~

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shall:

~~—— (a) ensure that records obtained under this compact are used only by authorized officials for authorized purposes;~~

~~—— (b) require that subsequent record checks are requested to obtain current information whenever a new need arises; and~~

~~—— (c) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.~~

~~—— Section 5. Section ~~53-19-105~~ is enacted to read:~~

~~—— **53-19-105. Record request procedures -- Positive identification -- Submission of requests -- Fees -- Additional search.**~~

~~—— (1) Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.~~

~~—— (2) Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.~~

~~—— (3) Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the National Identification Index by entities other than the FBI and state criminal history record repositories is not permitted for noncriminal justice purposes.~~

~~—— (4) A state criminal history record repository or the FBI:~~

~~—— (a) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and~~

~~—— (b) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.~~

~~—— (5) (a) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with~~

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~~fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices:~~

~~(b) If, with respect to a request forwarded by a state criminal history record repository under Subsection (5)(a), the FBI positively identifies the subject as having a III System-indexed record or records:~~

~~(i) the FBI shall advise the state criminal history record repository; and~~

~~(ii) the state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories:~~

~~Section 6. Section 53-19-106 is enacted to read:~~

~~**53-19-106. Compact council -- Establishment -- Organization -- Membership -- Meetings -- Quorum -- Rules, procedure, and standards -- Assistance from FBI -- Committees.**~~

~~(1) (a) There is established a compact council, which shall have the authority to promulgated rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes:~~

~~(b) The council shall:~~

~~(i) continue in existence as long as this compact remains in effect;~~

~~(ii) be located, for administrative purposes, within the FBI; and~~

~~(iii) be organized and hold the council's first meeting as soon as practicable after the effective date of this compact:~~

~~(2) The council shall be composed of 15 members, each of whom shall be appointed by the attorney general, as follows:~~

~~(a) nine members, each of whom shall serve a two-year term, and who shall be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that, in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis;~~

~~(b) two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom:~~

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~~—— (i) one shall be a representative of the criminal justice agencies of the federal government, but may not be an employee of the FBI; and~~

~~—— (ii) one shall be a representative of the noncriminal justice agencies of the federal government;~~

~~—— (c) two at-large members, nominated by the chair of the council, once the chairman is elected pursuant to Section 53-19-106, each of whom shall serve a three-year term, of whom:~~

~~—— (i) one shall be a representative of state or local criminal justice agencies; and~~

~~—— (ii) one shall be a representative of state or local noncriminal justice agencies;~~

~~—— (d) one member, who shall serve a three-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board; and~~

~~—— (e) one member, nominated by the director of the FBI, who shall serve a three-year term, and who shall be an employee of the FBI;~~

~~—— (3) (a) From its membership, the council shall elect a chair and a vice chair of the council, respectively. Both the chair and vice chair of the council:~~

~~—— (i) shall be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chair may be an at-large member; and~~

~~—— (ii) shall serve a two-year term and may be reelected to only one additional two-year term;~~

~~—— (b) The vice chair of the council shall serve as the chair of the council in the absence of the chair;~~

~~—— (4) (a) The council shall meet at least once each year at the call of the chair. Each meeting of the council shall be open to the public. The council shall provide prior public notice in the Federal Register of each meeting of the council, including the matters to be addressed at the meeting;~~

~~—— (b) A majority of the council or any committee of the council shall constitute a quorum of the council or of the committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.~~

~~—— (5) The council shall make available for public inspection and copying at the council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the council;~~

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~~—— (6) The council may request from the FBI any reports, studies, statistics, or other information or materials the council determines to be necessary to enable the council to perform the council's duties under this compact. The FBI, to the extent authorized by law, may provide any assistance or information upon a request.~~

~~—— (7) The chair may establish committees necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.~~

~~—— Section 7. Section 53-19-107 is enacted to read:~~

~~—— **53-19-107. Ratification compact.**~~

~~—— This compact shall take effect upon being entered into by two or more states as between those states and the federal government. Upon subsequent entering into this compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.~~

~~—— Section 8. Section 53-19-108 is enacted to read:~~

~~—— **53-19-108. Miscellaneous provisions -- Relation of compact to FBI activities -- No authority for nonappropriated expenditures.**~~

~~—— (1) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under 5 U.S.C. App. 2, Federal Advisory Committee Act, for all purposes other than noncriminal justice.~~

~~—— (2) Nothing in this compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.~~

~~—— (3) Nothing in this compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component of a criminal history record repository, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, Pub. L. No. 92-544, or regulations and guidelines promulgated under the act, including the rules and procedures promulgated by the council under Section 53-19-106, regarding the use and dissemination of criminal history records and information.~~

~~—— Section 9. Section 53-19-109 is enacted to read:~~

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~~53-19-109. Renunciation -- Effect:~~

~~(1) This compact shall bind each party state until renounced by the party state:~~

~~(2) Any renunciation of this compact by a party state shall:~~

~~(a) be effected in the same manner by which the party state ratified this compact; and~~

~~(b) become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.~~

~~Section 10. Section 53-19-110 is enacted to read:~~

~~53-19-110. Severability:~~

~~The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state, or to the Constitution of the United States, or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability to any government, agency, person, or circumstance is not affected. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.~~

~~Section 11. Section 53-19-111 is enacted to read:~~

~~53-19-111. Adjudication of disputes -- Duties of FBI -- Right of appeal:~~

~~(1) The council shall:~~

~~(a) have initial authority to make determinations with respect to any dispute regarding:~~

~~(i) interpretation of this compact;~~

~~(ii) any rule or standard established by the council pursuant to Section 53-19-105; and~~

~~(iii) any dispute or controversy between any parties to this compact; and~~

~~(b) hold a hearing concerning any dispute described in Subsection (1) at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision shall be published pursuant to the requirements of Section 53-19-106.~~

~~(2) The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the council holds a hearing on the matters.~~

~~(3) The FBI or a party state may appeal any decision of the council to the attorney~~

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~~general, and file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court shall be removed to the appropriate district court of the United States in the manner provided by 28 U.S.C. Sec. 1446, or other statutory authority.~~

~~**Legislative Review Note**~~

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