

Senator Wayne A. Harper proposes the following substitute bill:

EMPLOYMENT BACKGROUND CHECKS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill provides certain state agencies with the authority to require background checks for employees, contractors, and volunteers.

Highlighted Provisions:

This bill:

► provides the following entities with the authority to conduct local, regional, and national background checks for employees, contractors, appointees, and volunteers, as applicable:

- Department of Environmental Quality;
- Department of Financial Institutions;
- Department of Health;
- Department of Human Resource Management;
- Department of Workforce Services;
- Division of Purchasing;
- governor's office;
- State Auditor;
- State Tax Commission; and
- Utah Science Technology and Research Governing Authority;



26 ▶ requires the Bureau of Criminal Identification to provide agencies with the results of
27 the background checks; and

28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **35A-1-102**, as last amended by Laws of Utah 2016, Chapter 226

36 **53-10-108**, as last amended by Laws of Utah 2015, Chapters 255 and 389

37 **63A-3-201**, as last amended by Laws of Utah 2016, Chapter 298

38 ENACTS:

39 **7-1-212**, Utah Code Annotated 1953

40 **19-1-308**, Utah Code Annotated 1953

41 **26-1-17.1**, Utah Code Annotated 1953

42 **35A-1-104.1**, Utah Code Annotated 1953

43 **59-1-206.1**, Utah Code Annotated 1953

44 **63A-2-106**, Utah Code Annotated 1953

45 **63M-2-304**, Utah Code Annotated 1953

46 **67-3-10**, Utah Code Annotated 1953



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

49 Section 1. Section **7-1-212** is enacted to read:

50 **7-1-212. Background checks for employees.**

51 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
52 created in Section **53-10-201**.

53 (2) Beginning July 1, 2018, the department shall require current employees in, and all
54 applicants for, the following positions to submit to a fingerprint-based local, regional, and
55 national criminal history background check and ongoing monitoring as a condition of
56 employment:

57 (a) agency information security managers;

58 (b) financial institutions examiners;

59 (c) financial institutions managers; and

60 (d) financial institutions specialists.

61 (3) Each individual in a position listed in Subsection (2) shall provide a completed
62 fingerprint card to the department upon request.

63 (4) The department shall require that an individual required to submit to a background
64 check under Subsection (3) provide a signed waiver on a form provided by the department that
65 meets the requirements of Subsection [53-10-108](#)(4).

66 (5) For a noncriminal justice background search and registration in accordance with
67 Subsection [53-10-108](#)(13), the department shall submit to the bureau:

68 (a) the applicant's personal identifying information and fingerprints for a criminal
69 history search of applicable local, regional, and national databases; and

70 (b) a request for all information received as a result of the local, regional, and
71 nationwide background check.

72 (6) The department is responsible for the payment of all fees required by Subsection
73 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by
74 the bureau.

75 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
76 Administrative Rulemaking Act, that:

77 (a) determine how the department will assess the employment status of an individual
78 upon receipt of background information; and

79 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance
80 with Subsection [53-10-108](#)(13)(b).

81 Section 2. Section **19-1-308** is enacted to read:

82 **19-1-308. Background checks for employees.**

83 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
84 created in Section [53-10-201](#).

85 (2) Beginning July 1, 2018, the department shall require all appointees and applicants
86 for the following positions to submit to a fingerprint-based local, regional, and national
87 criminal history background check and ongoing monitoring as a condition of employment:

88 (a) administrative services managers;

89 (b) financial analysts;

90 (c) financial managers; and

91 (d) schedule AB and AD employees, in accordance with Section [67-19-15](#), in

92 appointed positions.

93 (3) Each appointee or applicant for a position listed in Subsection (2) shall provide a
94 completed fingerprint card to the department upon request.

95 (4) The department shall require that an individual required to submit to a background
96 check under Subsection (3) provide a signed waiver on a form provided by the department that
97 meets the requirements of Subsection [53-10-108](#)(4).

98 (5) For a noncriminal justice background search and registration in accordance with
99 Subsection [53-10-108](#)(13), the department shall submit to the bureau:

100 (a) the applicant's personal identifying information and fingerprints for a criminal
101 history search of applicable local, regional, and national databases; and

102 (b) a request for all information received as a result of the local, regional, and
103 nationwide background check.

104 (6) The department is responsible for the payment of all fees required by Subsection
105 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by
106 the bureau.

107 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
108 Administrative Rulemaking Act, that:

109 (a) determine how the department will assess the employment status of an individual
110 upon receipt of background information; and

111 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance
112 with Subsection [53-10-108](#)(13)(b).

113 Section 3. Section **26-1-17.1** is enacted to read:

114 **26-1-17.1. Background checks for employees.**

115 (1) As used in this section "bureau" means the Bureau of Criminal Identification
116 created in Section [53-10-201](#).

117 (2) Beginning July 1, 2018, the department may require a fingerprint-based local,
118 regional, and national criminal history background check and ongoing monitoring of:

- 119 (a) all staff, contracted employees, and volunteers who:
120 (i) have access to protected health information or personal identifying information;
121 (ii) have direct contact with patients, children, or vulnerable adults as defined in
122 Section 62A-2-120;
123 (iii) work in areas of privacy and data security;
124 (iv) handle financial information, including receipt of funds, reviewing invoices,
125 making payments, and other types of financial information; and
126 (v) perform audit functions, whether internal or external, on behalf of the department;
127 and
128 (b) job applicants who have been offered a position with the department and the job
129 requirements include those described in Subsection (2)(a).
130 (3) Each individual in a position listed in Subsection (2) shall provide a completed
131 fingerprint card to the department upon request.
132 (4) The department shall require that an individual required to submit to a background
133 check under Subsection (3) provide a signed waiver on a form provided by the department that
134 meets the requirements of Subsection 53-10-108(4).
135 (5) For a noncriminal justice background search and registration in accordance with
136 Subsection 53-10-108(13), the department shall submit to the bureau:
137 (a) the applicant's personal identifying information and fingerprints for a criminal
138 history search of applicable local, regional, and national databases; and
139 (b) a request for all information received as a result of the local, regional, and
140 nationwide background check.
141 (6) The department is responsible for the payment of all fees required by Subsection
142 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by
143 the bureau.
144 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
145 Administrative Rulemaking Act, that:
146 (a) determine how the department will assess the employment status of an individual
147 upon receipt of background information;
148 (b) determine the type of crimes and the severity that would disqualify an individual
149 from holding a position; and

150 (c) identify the appropriate privacy risk mitigation strategy to be used in accordance
151 with Subsection 53-10-108(13)(b).

152 Section 4. Section 35A-1-102 is amended to read:

153 **35A-1-102. Definitions.**

154 Unless otherwise specified, as used in this title:

155 (1) "Client" means an individual who the department has determined to be eligible for
156 services or benefits under:

157 (a) Chapter 3, Employment Support Act; and

158 (b) Chapter 5, Training and Workforce Improvement Act.

159 (2) "Department" means the Department of Workforce Services created in Section
160 35A-1-103.

161 (3) "Economic service area" means an economic service area established in accordance
162 with Chapter 2, Economic Service Areas.

163 (4) "Employment assistance" means services or benefits provided by the department
164 under:

165 (a) Chapter 3, Employment Support Act; and

166 (b) Chapter 5, Training and Workforce Improvement Act.

167 (5) "Employment center" is a location in an economic service area where the services
168 provided by an economic service area under Section 35A-2-201 may be accessed by a client.

169 (6) "Employment counselor" means an individual responsible for developing an
170 employment plan and coordinating the services and benefits under this title in accordance with
171 Chapter 2, Economic Service Areas.

172 (7) "Employment plan" means a written agreement between the department and a client
173 that describes:

174 (a) the relationship between the department and the client;

175 (b) the obligations of the department and the client; and

176 (c) the result if an obligation is not fulfilled by the department or the client.

177 (8) "Executive director" means the executive director of the department appointed
178 under Section 35A-1-201.

179 (9) "Government entity" means the state or any county, municipality, local district,
180 special service district, or other political subdivision or administrative unit of the state, a state

181 institution of higher education as defined in Section [53B-2-101](#), or a local education agency as
182 defined in Section [53A-30-102](#).

183 (10) "Public assistance" means:

- 184 (a) services or benefits provided under Chapter 3, Employment Support Act;
- 185 (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
- 186 (c) foster care maintenance payments provided from the General Fund or under Title
187 IV-E of the Social Security Act;
- 188 (d) SNAP benefits; and
- 189 (e) any other public funds expended for the benefit of a person in need of financial,
190 medical, food, housing, or related assistance.

191 (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under
192 Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as the
193 federal Food Stamp Program.

194 (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or
195 privilege available under SNAP.

196 (13) "Stabilization" means addressing the basic living, family care, and social or
197 psychological needs of the client so that the client may take advantage of training or
198 employment opportunities provided under this title or through other agencies or institutions.

199 (14) "Vulnerable populations" means children or adults with a life situation that
200 substantially affects that individual's ability to:

- 201 (a) provide personal protection;
- 202 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 203 (c) obtain services necessary for health, safety, or welfare;
- 204 (d) carry out the activities of daily living;
- 205 (e) manage the adult's own financial resources; or
- 206 (f) comprehend the nature and consequences of remaining in a situation of abuse,
207 neglect, or exploitation.

208 Section 5. Section **35A-1-104.1** is enacted to read:

209 **35A-1-104.1. Background checks for employees.**

210 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
211 created in Section [53-10-201](#).

212 (2) Beginning July 1, 2018, the department may require current employees in, and all
213 applicants for, the following positions to submit to a fingerprint-based local, regional, and
214 national criminal history background check and ongoing monitoring as a condition of
215 employment:

216 (a) employees that access or may access federal tax information; and

217 (b) employees serving or interacting with vulnerable populations as defined in Section
218 35A-1-102.

219 (3) Each individual in a position listed in Subsection (2) shall provide a completed
220 fingerprint card to the department upon request.

221 (4) The department shall require that an individual required to submit to a background
222 check under Subsection (3) provide a signed waiver on a form provided by the department that
223 meets the requirements of Subsection 53-10-108(4).

224 (5) For a noncriminal justice background search and registration in accordance with
225 Subsection 53-10-108(13), the department shall submit to the bureau:

226 (a) the applicant's personal identifying information and fingerprints for a criminal
227 history search of applicable local, regional, and national databases; and

228 (b) a request for all information received as a result of the local, regional, and
229 nationwide background check.

230 (6) The department is responsible for the payment of all fees required by Subsection
231 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by
232 the bureau.

233 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
234 Administrative Rulemaking Act, that:

235 (a) determine how the department will assess the employment status of an individual
236 upon receipt of background information; and

237 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance
238 with Subsection 53-10-108(13)(b).

239 Section 6. Section 53-10-108 is amended to read:

240 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
241 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
242 **-- Missing children records -- Penalty for misuse of records.**

243 (1) As used in this section:

244 (a) "FBI Rap Back System" means the rap back system maintained by the Federal
245 Bureau of Investigation.

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

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

251 (2) Dissemination of information from a criminal history record [or], including
252 information obtained from a fingerprint background check, name check, warrant of arrest
253 information, or information from division files, is limited to:

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

256 (b) ~~§~~ **→ (i) ←** ~~§~~ agencies or individuals pursuant to a specific agreement with a criminal
256a justice

257 agency to provide services required for the administration of criminal justice;

257a **§** **→ (ii) the agreement shall specifically authorize access to data, limit the use of the data**
257b **to purposes for which given, and ensure the security and confidentiality of the data; ←** ~~§~~

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

260 ~~[(b)]~~ (d) noncriminal justice agencies or individuals for any purpose authorized by
261 statute, executive order, court rule, court order, or local ordinance;

262 ~~[(c)]~~ (e) agencies or individuals for the purpose of obtaining required clearances
263 connected with foreign travel or obtaining citizenship;

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

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

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

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

273 ~~[(i)]~~ (g) private security agencies through guidelines established by the commissioner

274 for employment background checks for their own employees and prospective employees;

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

277 (h) state agencies for the purpose of conducting a background check for the following
 278 individuals:

279 (i) employees;

280 (ii) applicants for employment;

281 (iii) volunteers; and

282 (iv) contract employees;

283 (i) governor's office for the purpose of conducting a background check on the
 284 following individuals:

285 (i) cabinet members;

286 (ii) judicial applicants; and

287 (iii) members of boards, committees, and commissions appointed by the governor;

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

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

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

298 (4) (a) Before requesting information [~~under Subsection (2)(g)~~], a qualifying entity
 299 ~~[must]~~ under Subsection (2)(c), state agency, $\hat{S} \rightarrow$ or $\leftarrow \hat{S}$ other agency or individual described in
 300 Subsections (2)(d) through (i) $\hat{S} \rightarrow$ [~~, or the governor's office~~] $\leftarrow \hat{S}$ shall obtain a signed waiver from
 300a the
 301 person whose information is requested.

302 (b) The waiver ~~[must]~~ shall notify the signee:

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

304 (ii) who will see the information; and

305 (iii) how the information will be used.

306 (c) A qualifying entity under Subsection (2)(c), state agency, ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ other agency or
306a individual

307 described in Subsections (2)(d) through (g) ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ that submits a
307a request for a
308 noncriminal justice name based background check of local databases to the bureau shall
309 provide to the bureau:

310 (i) personal identifying information for the subject of the background check; and

311 (ii) the fee required by Subsection (15)(a)(ii).

312 (d) A qualifying entity under Subsection (2)(c), state agency, ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ other agency or
312a individual

313 described in Subsections (2)(d) through (g) ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ that submits a
313a request for a

314 WIN database check to the bureau shall provide to the bureau:

315 (i) personal identifying information for the subject of the background check;

316 (ii) a fingerprint card for the subject of the background check; and

317 (iii) the fee required by Subsection (15)(a)(i).

318 ~~(e)~~ (e) Information received by a qualifying entity under Subsection (2)~~(g)~~(c), state
319 agency, ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ other agency or individual described in Subsections (2)(d) through (i) ~~Ŝ~~ ~~or~~ ~~←Ŝ~~
319a ~~the governor's~~

320 ~~office~~ ~~←Ŝ~~ may only be:

321 (i) available to ~~[persons]~~ individuals involved in the hiring or background investigation
322 of the ~~job applicant or~~ employee; ~~[and]~~

323 (ii) used for the purpose of assisting in making an employment, appointment, selection,
324 or promotion decision[-]; and

325 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection
326 (4)(b).

327 ~~[(d) A person]~~ (f) An individual who disseminates or uses information obtained from
328 the division under ~~[Subsection (2)(g)]~~ Subsections (2)(c) through (i) for purposes other than
329 those specified under Subsection (4)~~(e)~~(e), in addition to any penalties provided under this
330 section, is subject to civil liability.

331 ~~(e)~~ (g) A qualifying entity under Subsection (2)(c), state agency, ~~Ŝ~~ ~~or~~ ~~←Ŝ~~ other agency
331a or

332 individual described in Subsections (2)(d) through (i) ~~Ŝ~~ ~~or~~ ~~←Ŝ~~

332a that obtains
333 background check information [~~under Subsection (2)(g)~~] shall provide the [~~employee or~~
334 ~~employment applicant~~] subject of the background check an opportunity to:
335 (i) review the information received as provided under Subsection (9); and

336 (ii) respond to any information received.

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

339 [(g)] (i) The division or its employees are not liable for defamation, invasion of
340 privacy, negligence, or any other claim in connection with the contents of information
341 disseminated under [Subsection (2)(g)] Subsections (2)(c) through (i).

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

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

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

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

357 (6) The division may not disseminate criminal history record information to qualifying
358 entities under Subsection (2)[(g)](c) ~~to~~ **state agencies, other agencies or individuals described in**
359 **Subsection (2)(d) through (i), or the governor's office** ~~to~~ regarding employment background
360 checks if the information is related to charges:

361 (a) that have been declined for prosecution;

362 (b) that have been dismissed; or

363 (c) regarding which a person has been acquitted.

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

366 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by

367 unauthorized agencies or individuals.

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

371 (9) (a) The commissioner shall establish procedures to allow an individual right of
372 access to review and receive a copy of the individual's criminal history report.

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

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

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

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

382 (a) shall be charged for access; and

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

385 (11) Before providing information requested under this section, the division shall give
386 priority to criminal justice agencies needs.

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

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

396 (13) (a) Subject to Subsection (13)(b), a qualifying entity [~~or an entity described in~~
397 ~~Subsection (2)(b)] under Subsection (2)(c), state agency, ~~§~~→ or ←~~§~~ other agency or individual
397a described~~

398 in ~~§~~ ~~→~~ [Subsections] Subsection ~~←~~ ~~§~~ (2)(d) ~~§~~ ~~→~~ [through (g), or the governor's office] ~~←~~ ~~§~~ may
398a request that the division register
399 fingerprints taken for the purpose of conducting current and future criminal background checks
400 under this section with:

- 401 (i) the WIN Database rap back system, or any successor system;
- 402 (ii) the FBI Rap Back System; or
- 403 (iii) a system maintained by the division.

404 (b) A qualifying entity ~~[or an entity described in Subsection (2)(b)]~~ under Subsection
405 (2)(c), state agency, other agency or individual described in ~~§~~ ~~→~~ [Subsections] Subsection ~~←~~ ~~§~~ (2)(d)
405a ~~§~~ ~~→~~ [through (g), or
406 the governor's office] ~~←~~ ~~§~~ may only make a request under Subsection (13)(a) if the entity:

- 407 (i) has the authority through state or federal statute or federal executive order;
- 408 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

409 and

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

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

415 (15) (a) ~~[(i) The]~~ For a noncriminal justice applicant:

- 416 (i) the applicant fingerprint card fee under Subsection (2) is \$20[-]; and
- 417 (ii) ~~[The]~~ the name background check fee under Subsection (2) is \$15.
- 418 ~~[(iii)]~~ (b) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.
- 419 ~~[(iv)]~~ (c) The fees described in [this Subsection] Subsections (15)(a) and (b) remain in
420 effect until changed by the division through the process under Section 63J-1-504.
- 421 ~~[(b)]~~ (d) Funds generated under this Subsection (15) shall be deposited into the General
422 Fund as a dedicated credit by the department to cover the costs incurred in providing the
423 information.
- 424 ~~[(e)]~~ (e) The division may collect fees charged by an outside agency for services
425 required under this section.

426 (16) For the purposes of conducting a criminal background check authorized under
427 Subsection (2)(h) or (2)(i), the Department of Human Resource Management, in accordance
428 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office

429 shall have direct access to criminal background information maintained under Title 53, Chapter
430 10, Part 2, Bureau of Criminal Identification.

431 Section 7. Section **59-1-206.1** is enacted to read:

432 **59-1-206.1. Definitions -- Background checks for employees.**

433 (1) As used in this section:

434 (a) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#).

435 (b) "Return information" means the same as that term is defined in 26 U.S.C. Sec.
436 6103.

437 (2) The commission shall:

438 (a) require the following individuals to submit to a nationwide criminal background
439 check and ongoing monitoring of that nationwide criminal background check as a condition of
440 employment:

441 (i) an employee or contractor of the commission that has access to return information
442 in the custody of the commission, regardless of whether access by the employee or contractor is
443 authorized; and

444 (ii) an employee or contractor of the commission that has access to information in the
445 custody of the commission in the Utah Criminal Justice Information System, regardless of
446 whether access by the employee or contractor is authorized; and

447 (b) require the following individuals to submit to a nationwide criminal background
448 check and ongoing monitoring of the nationwide criminal background check:

449 (i) an employee or contractor of another state agency, or an employee of the office of
450 the attorney general, that has access to return information in the custody of the commission,
451 regardless of whether access by the employee or contractor is authorized; and

452 (ii) an employee or contractor of another state agency, or an employee of the office of
453 the attorney general, that has access to information in the custody of the commission in the
454 Utah Criminal Justice Information System, regardless of whether access by the employee or
455 contractor is authorized.

456 (3) The commission shall collect the following from an individual required to submit
457 to a background check under Subsection (2):

458 (a) the personal identifying information required on the fingerprint card; and

459 (b) consent, on a form specified by the commission, for:

460 (i) an initial fingerprint-based state, regional, and national background check by the
461 Federal Bureau of Investigation and the bureau upon submission of the application; and

462 (ii) retention of personal identifying information for ongoing monitoring through
463 registration with the systems described in Subsection 53-10-108(13).

464 (4) For an individual required to submit to a background check under Subsection (2),
465 the commission shall submit the individual's personal identifying information to the bureau for:

466 (a) an initial fingerprint-based background check by the Federal Bureau of
467 Investigation and the bureau; and

468 (b) ongoing monitoring through registration with the systems described in Subsection
469 53-10-108(13) if the results of the initial background check do not contain disqualifying
470 criminal history information as determined by the commission.

471 (5) The commission shall:

472 (a) submit any fees required under Subsection 53-10-108(15) to the bureau; and

473 (b) identify the appropriate privacy risk mitigation strategy that will be used to ensure
474 that the commission only receives notifications for individuals described in Subsection (2).

475 (6) The bureau shall provide all the results from the state, regional, and nationwide
476 criminal history background checks and monitoring performed under Subsection (4) to the
477 commission.

478 (7) On or before May 1, 2019, the commission shall:

479 (a) collect the information and consent described in Subsection (3) from individuals
480 described in Subsection (2)(a) who:

481 (i) were employed by or under contract with the commission prior to May 8, 2018; and

482 (ii) are employed by or under contract with the commission; and

483 (b) submit the information and consent described in Subsection (3) to the bureau for
484 ongoing monitoring through registration with the systems described in Subsection
485 53-10-108(13).

486 (8) Upon receipt of criminal history information under Subsection 53-10-108(13)
487 regarding an individual described in Subsection (2)(a), the commission shall assess the
488 employment status of the employee or contractor.

489 (9) Upon receipt of criminal history information under Subsection 53-10-108(13)
490 regarding an individual described in Subsection (2)(b), the commission shall deny the

491 employee or contractor access to:

492 (a) return information in the custody of the commission; and

493 (b) information in the custody of the commission in the Utah Criminal Justice
494 Information System.

495 Section 8. Section **63A-2-106** is enacted to read:

496 **63A-2-106. Background checks for employees.**

497 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
498 created in Section [53-10-201](#).

499 (2) Beginning July 1, 2018, the division shall require all applicants for the following
500 positions to submit to a fingerprint-based local, regional, and national criminal history
501 background check and ongoing monitoring as a condition of employment:

502 (a) assistant directors;

503 (b) contract analysts; and

504 (c) purchasing agents.

505 (3) Each applicant for a position listed in Subsection (2) shall provide a completed
506 fingerprint card to the division upon request.

507 (4) The division shall require that an individual required to submit to a background
508 check under Subsection (3) provide a signed waiver on a form provided by the division that
509 meets the requirements of Subsection [53-10-108](#)(4).

510 (5) For a noncriminal justice background search and registration in accordance with
511 Subsection [53-10-108](#)(13), the division shall submit to the bureau:

512 (a) the applicant's personal identifying information and fingerprints for a criminal
513 history search of applicable local, regional, and national databases; and

514 (b) a request for all information received as a result of the local, regional, and
515 nationwide background check.

516 (6) The division is responsible for the payment of all fees required by Subsection
517 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by
518 the bureau.

519 (7) The division may make rules in accordance with Title 63G, Chapter 3, Utah
520 Administrative Rulemaking Act, that:

521 (a) determine how the division will assess the employment status of an individual upon

522 receipt of background information; and

523 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance
524 with Subsection 53-10-108(13)(b).

525 Section 9. Section **63A-3-201** is amended to read:

526 **63A-3-201. Appointment of accounting and other officers and employees by**
527 **director of the Division of Finance -- Delegation of powers and duties by director --**
528 **Background checks.**

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

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

533 (a) organize the division and employ other assistants to discharge the functions of the
534 division;

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

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

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

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

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

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

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

546 (B) performing internal control functions or accounting;

547 (C) creating reports on public funds; or

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

550 (iv) "State agency" means:

551 (A) an executive branch agency; or

552 (B) a state educational institution with the exception of an institution defined in

553 Subsection [53B-1-102\(1\)](#).

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

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

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

558 (A) the Federal Bureau of Investigation;

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

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

561 (iii) consent to a credit history report, subject to the requirements of the Fair Credit
562 Reporting Act, 15 U.S.C. Sec. 1681 et seq.

563 (c) The Bureau of Criminal Identification shall provide all the results from the state,
564 regional, and nationwide criminal history background checks to the division.

565 [~~(c)~~] (d) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah
566 Administrative Rulemaking Act, adopt rules to implement this section.

567 Section 10. Section **63M-2-304** is enacted to read:

568 **63M-2-304. Background checks for employees.**

569 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
570 created in Section [53-10-201](#).

571 (2) Beginning July 1, 2018, the governing authority:

572 (a) shall require all applicants for Schedule A positions, in accordance with Section
573 [67-19-15](#), to submit to a fingerprint-based local, regional, and national criminal history
574 background check and ongoing monitoring as a condition of employment; and

575 (b) may require applicants for time limited positions to submit to a fingerprint-based,
576 local, regional, and national criminal history background check and ongoing monitoring as a
577 condition of employment if the applicant, as an employee:

578 (i) will interact with children, or vulnerable adults as defined in Section [62A-2-120](#); or

579 (ii) may have access to sensitive personal and financial information.

580 (3) Each individual in a position listed in Subsection (2) shall provide a completed
581 fingerprint card to the governing authority upon request.

582 (4) The governing authority shall require that an individual required to submit to a
583 background check under Subsection (3) provide a signed waiver on a form provided by the

584 governing authority that meets the requirements of Subsection 53-10-108(4).

585 (5) For a noncriminal justice background search and registration in accordance with
586 Subsection 53-10-108(13), the governing authority shall submit to the bureau:

587 (a) the applicant's personal identifying information and fingerprints for a criminal
588 history search of applicable local, regional, and national databases; and

589 (b) a request for all information received as a result of the local, regional, and
590 nationwide background check.

591 (6) The governing authority is responsible for the payment of all fees required by
592 Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of
593 Investigation by the bureau.

594 (7) The governing authority may make rules in accordance with Title 63G, Chapter 3,
595 Utah Administrative Rulemaking Act, that:

596 (a) determine how the governing authority will assess the employment status of an
597 individual upon receipt of background information; and

598 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance
599 with Subsection 53-10-108(13)(b).

600 Section 11. Section 67-3-10 is enacted to read:

601 **67-3-10. Background checks for employees.**

602 (1) As used in this section, "Bureau" means the Bureau of Criminal Identification
603 created in Section 53-10-201.

604 (2) Beginning July 1, 2018, the state auditor shall require employees involved in an
605 audit, investigation, or review requiring access to information and records, the access to which
606 requires a background check by federal statute or regulation, to submit to a fingerprint-based
607 local, regional, and national criminal history background check and ongoing monitoring as a
608 condition of employment.

609 (3) Each individual in a position listed in Subsection (2) shall provide a completed
610 fingerprint card to the state auditor upon request.

611 (4) The state auditor shall require that an individual required to submit to a background
612 check under Subsection (3) provide a signed waiver on a form provided by the state auditor that
613 meets the requirements of Subsection 53-10-108(4).

614 (5) For a noncriminal justice background search and registration in accordance with

615 Subsection 53-10-108(13), the state auditor shall submit to the bureau:

616 (a) the applicant's personal identifying information and fingerprints for a criminal
617 history search of applicable local, regional, and national databases; and

618 (b) a request for all information received as a result of the local, regional, and
619 nationwide background check.

620 (6) The state auditor is responsible for the payment of all fees required by Subsection
621 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by
622 the bureau.

623 (7) The state auditor may set office policy that:

624 (a) determines how the state auditor will assess the employment status of an individual
625 upon receipt of background information; and

626 (b) identifies the appropriate privacy risk mitigation strategy to be used in accordance
627 with Subsection 53-10-108(13)(b).