

**EMPLOYMENT BACKGROUND CHECKS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Eric K. Hutchings

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**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 Tax Commission; and
- Utah Science Technology and Research Governing Authority;

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

▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **35A-1-102**, as last amended by Laws of Utah 2016, Chapter 226

35 **53-10-108**, as last amended by Laws of Utah 2015, Chapters 255 and 389

36 **63A-3-201**, as last amended by Laws of Utah 2016, Chapter 298

37 ENACTS:

38 **7-1-212**, Utah Code Annotated 1953

39 **19-1-308**, Utah Code Annotated 1953

40 **26-1-17.1**, Utah Code Annotated 1953

41 **35A-1-104.1**, Utah Code Annotated 1953

42 **59-1-206.1**, Utah Code Annotated 1953

43 **63A-2-106**, Utah Code Annotated 1953

44 **63M-2-304**, Utah Code Annotated 1953



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

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

48 **7-1-212. Background checks for employees.**

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

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

- 55 (a) agency information security managers;
- 56 (b) financial institutions examiners;
- 57 (c) financial institutions managers; and
- 58 (d) financial institutions specialists.

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

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

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

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

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

70           (6) The department is responsible for the payment of all fees required by Subsection  
71 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
72 the bureau.

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

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

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

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

80           **19-1-308. Background checks for employees.**

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

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

86           (a) administrative services managers;

87           (b) financial analysts;

88           (c) financial managers; and

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

90 appointed positions.

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

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

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

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

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

102 (6) The department is responsible for the payment of all fees required by Subsection  
103 [53-10-108](#)(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
104 the bureau.

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

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

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

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

112 **26-1-17.1. Background checks for employees.**

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

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

117 (a) all staff, contracted employees, and volunteers who:

118 (i) have access to protected health information or personal identifying information;

119 (ii) have direct contact with patients, children, or vulnerable adults as defined in

120 Section [62A-2-120](#);

- 121 (iii) work in areas of privacy and data security;  
122 (iv) handle financial information, including receipt of funds, reviewing invoices,  
123 making payments, and other types of financial information; and  
124 (v) perform audit functions, whether internal or external, on behalf of the department;  
125 and  
126 (b) job applicants who have been offered a position with the department and the job  
127 requirements include those described in Subsection (2)(a).  
128 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
129 fingerprint card to the department upon request.  
130 (4) The department shall require that an individual required to submit to a background  
131 check under Subsection (3) provide a signed waiver on a form provided by the department that  
132 meets the requirements of Subsection 53-10-108(4).  
133 (5) For a noncriminal justice background search and registration in accordance with  
134 Subsection 53-10-108(13), the department shall submit to the bureau:  
135 (a) the applicant's personal identifying information and fingerprints for a criminal  
136 history search of applicable local, regional, and national databases; and  
137 (b) a request for all information received as a result of the local, regional, and  
138 nationwide background check.  
139 (6) The department is responsible for the payment of all fees required by Subsection  
140 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
141 the bureau.  
142 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
143 Administrative Rulemaking Act, that:  
144 (a) determine how the department will assess the employment status of an individual  
145 upon receipt of background information;  
146 (b) determine the type of crimes and the severity that would disqualify an individual  
147 from holding a position; and  
148 (c) identify the appropriate privacy risk mitigation strategy to be used in accordance  
149 with Subsection 53-10-108(13)(b).  
150 Section 4. Section 35A-1-102 is amended to read:  
151 **35A-1-102. Definitions.**

152 Unless otherwise specified, as used in this title:

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

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

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

157 (2) "Department" means the Department of Workforce Services created in Section  
158 [35A-1-103](#).

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

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

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

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

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

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

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

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

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

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

175 (8) "Executive director" means the executive director of the department appointed  
176 under Section [35A-1-201](#).

177 (9) "Government entity" means the state or any county, municipality, local district,  
178 special service district, or other political subdivision or administrative unit of the state, a state  
179 institution of higher education as defined in Section [53B-2-101](#), or a local education agency as  
180 defined in Section [53A-30-102](#).

181 (10) "Public assistance" means:

182 (a) services or benefits provided under Chapter 3, Employment Support Act;

183 (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

184 (c) foster care maintenance payments provided from the General Fund or under Title

185 IV-E of the Social Security Act;

186 (d) SNAP benefits; and

187 (e) any other public funds expended for the benefit of a person in need of financial,

188 medical, food, housing, or related assistance.

189 (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under

190 Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as the

191 federal Food Stamp Program.

192 (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or

193 privilege available under SNAP.

194 (13) "Stabilization" means addressing the basic living, family care, and social or

195 psychological needs of the client so that the client may take advantage of training or

196 employment opportunities provided under this title or through other agencies or institutions.

197 (14) "Vulnerable populations" means children or adults with a life situation that

198 substantially affects that individual's ability to:

199 (a) provide personal protection;

200 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

201 (c) obtain services necessary for health, safety, or welfare;

202 (d) carry out the activities of daily living;

203 (e) manage the adult's own financial resources; or

204 (f) comprehend the nature and consequences of remaining in a situation of abuse,

205 neglect, or exploitation.

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

207 **35A-1-104.1. Background checks for employees.**

208 (1) As used in this section, "bureau" means the Bureau of Criminal Identification

209 created in Section [53-10-201](#).

210 (2) Beginning July 1, 2018, the department may require current employees in, and all

211 applicants for, the following positions to submit to a fingerprint-based local, regional, and

212 national criminal history background check and ongoing monitoring as a condition of

213 employment:

- 214 (a) employees that access or may access federal tax information; and  
215 (b) employees serving or interacting with vulnerable populations as defined in Section  
216 35A-1-102.
- 217 (3) Each individual in a position listed in Subsection (2) shall provide a completed  
218 fingerprint card to the department upon request.
- 219 (4) The department shall require that an individual required to submit to a background  
220 check under Subsection (3) provide a signed waiver on a form provided by the department that  
221 meets the requirements of Subsection 53-10-108(4).
- 222 (5) For a noncriminal justice background search and registration in accordance with  
223 Subsection 53-10-108(13), the department shall submit to the bureau:
- 224 (a) the applicant's personal identifying information and fingerprints for a criminal  
225 history search of applicable local, regional, and national databases; and  
226 (b) a request for all information received as a result of the local, regional, and  
227 nationwide background check.
- 228 (6) The department is responsible for the payment of all fees required by Subsection  
229 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
230 the bureau.
- 231 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
232 Administrative Rulemaking Act, that:
- 233 (a) determine how the department will assess the employment status of an individual  
234 upon receipt of background information; and  
235 (b) identify the appropriate privacy risk mitigation strategy to be used in accordance  
236 with Subsection 53-10-108(13)(b).
- 237 Section 6. Section **53-10-108** is amended to read:
- 238 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**  
239 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**  
240 **-- Missing children records -- Penalty for misuse of records.**
- 241 (1) As used in this section:
- 242 (a) "FBI Rap Back System" means the rap back system maintained by the Federal  
243 Bureau of Investigation.
- 244 (b) "Rap back system" means a system that enables authorized entities to receive



245 ongoing status notifications of any criminal history reported on individuals whose fingerprints  
246 are registered in the system.

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

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

252 (a) criminal justice agencies for purposes of administration of criminal justice and for  
253 employment screening by criminal justice agencies;

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

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

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

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

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

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

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

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

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

273 (i) employees;

274 (ii) applicants for employment;

275 (iii) volunteers; and

276 (iv) contract employees;

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

279 (i) cabinet members; and

280 (ii) members of boards, committees, and commissions appointed by the governor; and

281 ~~[(h)]~~ (j) other agencies and individuals as the commissioner authorizes and finds  
282 necessary for protection of life and property and for offender identification, apprehension, and  
283 prosecution pursuant to an agreement.

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

288 (4) (a) Before requesting information under ~~[Subsection (2)(g), a qualifying entity~~  
289 ~~must]~~ Subsections (2)(b) through (i), an entity, state agency, or the governor's office shall  
290 obtain a signed waiver from the person whose information is requested.

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

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

293 (ii) who will see the information; and

294 (iii) how the information will be used.

295 (c) An entity authorized under Subsection (2) that submits a request for a noncriminal  
296 justice name based background check of local databases to the bureau shall provide to the  
297 bureau:

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

299 (ii) a signed waiver as described in Subsection (4)(a); and

300 (iii) the fee required by Subsection (15)(a)(ii).

301 (d) An entity, state agency, or the governor's office authorized under Subsections (2)(b)  
302 through (i) that submits a request for a WIN database check to the bureau shall provide to the  
303 bureau:

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

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

306 (iii) a signed waiver as described in Subsection (4)(a); and

307 (iv) the fee required by Subsection (15)(a)(i).

308 ~~[(e)]~~ (e) Information received by [a qualifying entity under Subsection (2)(g)] an entity,  
309 state agency, or the governor's office under Subsections (2)(b) through (i) may only be:

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

312 (ii) used for the purpose of assisting in making an employment, appointment, selection,  
313 or promotion decision.

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

318 ~~[(e)]~~ (g) [A qualifying] An entity, state agency, or the governor's office that obtains  
319 information under ~~[Subsection (2)(g)]~~ Subsections (2)(b) through (i) shall provide the  
320 employee or employment applicant an opportunity to:

321 (i) review the information received as provided under Subsection (9); and

322 (ii) respond to any information received.

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

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

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

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

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

338 criminal case.

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

343 (6) The division may not disseminate criminal history record information to [~~qualifying~~  
344 ~~entities under Subsection (2)(g)] entities, state agencies, or the governor's office under  
345 Subsections (2)(b) through (i) regarding employment background checks if the information is  
346 related to charges:~~

- 347 (a) that have been declined for prosecution;  
348 (b) that have been dismissed; or  
349 (c) regarding which [~~a person~~] an individual has been acquitted.

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

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

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

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

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

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

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

367 (10) The private security agencies as provided in Subsection (2)(f)(ii):

368 (a) shall be charged for access; and

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

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

373 (12) (a) It is a class B misdemeanor for ~~[a person]~~ an individual to knowingly or  
374 intentionally access, use, disclose, or disseminate a record created, maintained, or to which  
375 access is granted by the division or any information contained in a record created, maintained,  
376 or to which access is granted by the division for a purpose prohibited or not permitted by  
377 statute, rule, regulation, or policy of a governmental entity.

378 (b) ~~[A person]~~ An individual who discovers or becomes aware of any unauthorized use  
379 of records created or maintained, or to which access is granted by the division shall inform the  
380 commissioner and the director of the Utah Bureau of Criminal Identification of the  
381 unauthorized use.

382 (13) (a) Subject to Subsection (13)(b), ~~[a qualifying entity or an entity described in~~  
383 ~~Subsection (2)(b)]~~ an entity, state agency, or the governor's office described in Subsections  
384 (2)(b) through (i) may request that the division register fingerprints taken for the purpose of  
385 conducting current and future criminal background checks under this section with:

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

389 (b) ~~[A qualifying entity or an entity described in Subsection (2)(b)]~~ An entity, state  
390 agency, or the governor's office described in Subsections (2)(b) through (i) may only make a  
391 request under Subsection (13)(a) if the entity:

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

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

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

400 (15) (a) ~~[(i) The]~~ For a noncriminal justice applicant:  
401 (i) the applicant fingerprint card fee under Subsection (2) is \$20[-]; and  
402 (ii) [The] the name background check fee under Subsection (2) is \$15.  
403 ~~[(iii)]~~ (b) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.  
404 ~~[(iv)]~~ (c) The fees described in [this Subsection] Subsections (15)(a) and (b) remain in  
405 effect until changed by the division through the process under Section 63J-1-504.  
406 ~~[(b)]~~ (d) Funds generated under this Subsection (15) shall be deposited into the General  
407 Fund as a dedicated credit by the department to cover the costs incurred in providing the  
408 information.  
409 ~~[(e)]~~ (e) The division may collect fees charged by an outside agency for services  
410 required under this section.

411 (16) For the purposes of conducting a criminal background check authorized under  
412 Subsection (2)(h) or (2)(i), the Department of Human Resource Management, in accordance  
413 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office  
414 shall have direct access to criminal background information maintained under Title 53, Chapter  
415 10, Part 2, Bureau of Criminal Identification.

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

417 **59-1-206.1. Definitions -- Background checks for employees.**

418 (1) As used in this section:

419 (a) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201.

420 (b) "Return information" means the same as that term is defined in 26 U.S.C. Sec.  
421 6103.

422 (2) The commission shall:

423 (a) require the following individuals to submit to a nationwide criminal background  
424 check and ongoing monitoring of that nationwide criminal background check as a condition of  
425 employment:

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

429 (ii) an employee or contractor of the commission that has access to information in the  
430 custody of the commission in the Utah Criminal Justice Information System, regardless of

431 whether access by the employee or contractor is authorized; and

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

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

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

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

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

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

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

447 (ii) retention of personal identifying information for ongoing monitoring through  
448 registration with the systems described in Subsection [53-10-108\(13\)](#).

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

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

453 (b) ongoing monitoring through registration with the systems described in Subsection  
454 [53-10-108\(13\)](#) if the results of the initial background check do not contain disqualifying  
455 criminal history information as determined by the commission.

456 (5) The commission shall:

457 (a) submit any fees required under Subsection [53-10-108\(15\)](#) to the bureau; and

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

460 (6) The bureau shall provide all the results from the state, regional, and nationwide  
461 criminal history background checks and monitoring performed under Subsection (4) to the

462 commission.

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

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

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

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

468 (b) submit the information and consent described in Subsection (3) to the bureau for  
469 ongoing monitoring through registration with the systems described in Subsection

470 53-10-108(13).

471 (8) Upon receipt of criminal history information under Subsection 53-10-108(13)

472 regarding an individual described in Subsection (2)(a), the commission shall assess the  
473 employment status of the employee or contractor.

474 (9) Upon receipt of criminal history information under Subsection 53-10-108(13)

475 regarding an individual described in Subsection (2)(b), the commission shall deny the  
476 employee or contractor access to:

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

478 (b) information in the custody of the commission in the Utah Criminal Justice  
479 Information System.

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

481 **63A-2-106. Background checks for employees.**

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

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

487 (a) assistant directors;

488 (b) contract analysts; and

489 (c) purchasing agents.

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

492 (4) The division shall require that an individual required to submit to a background



493 check under Subsection (3) provide a signed waiver on a form provided by the division that  
494 meets the requirements of Subsection 53-10-108(4).

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

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

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

501 (6) The division is responsible for the payment of all fees required by Subsection  
502 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by  
503 the bureau.

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

506 (a) determine how the division will assess the employment status of an individual upon  
507 receipt of background information; and

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

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

511 **63A-3-201. Appointment of accounting and other officers and employees by**  
512 **director of the Division of Finance -- Delegation of powers and duties by director --**  
513 **Background checks.**

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

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

518 (a) organize the division and employ other assistants to discharge the functions of the  
519 division;

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

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

- 524 (3) (a) As used in this Subsection (3):
- 525 (i) "Public employee" means a person employed by a state agency.
- 526 (ii) "Public funds" means money, funds, and accounts, regardless of the source from  
527 which the money, funds, and accounts are derived, that are owned, held, or administered by a  
528 state agency.
- 529 (iii) "Public funds position" means employment with a state agency that requires:
- 530 (A) physical or electronic access to public funds;
- 531 (B) performing internal control functions or accounting;
- 532 (C) creating reports on public funds; or
- 533 (D) using, operating, or accessing state systems that account for or help account for  
534 public funds.
- 535 (iv) "State agency" means:
- 536 (A) an executive branch agency; or
- 537 (B) a state educational institution with the exception of an institution defined in  
538 Subsection [53B-1-102\(1\)](#).
- 539 (b) The Division of Finance may require that a public employee who applies for or  
540 holds a public funds position:
- 541 (i) submit a fingerprint card in a form acceptable to the division;
- 542 (ii) consent to a criminal background check by:
- 543 (A) the Federal Bureau of Investigation;
- 544 (B) the Utah Bureau of Criminal Identification; or
- 545 (C) another agency of any state that performs criminal background checks; or
- 546 (iii) consent to a credit history report, subject to the requirements of the Fair Credit  
547 Reporting Act, 15 U.S.C. Sec. 1681 et seq.
- 548 (c) The Bureau of Criminal Identification shall provide all the results from the state,  
549 regional, and nationwide criminal history background checks to the division.
- 550 ~~(e)~~ (d) The Division of Finance may, in accordance with Title 63G, Chapter 3, Utah  
551 Administrative Rulemaking Act, adopt rules to implement this section.
- 552 Section 10. Section **63M-2-304** is enacted to read:
- 553 **63M-2-304. Background checks for employees.**
- 554 (1) As used in this section, "bureau" means the Bureau of Criminal Identification

555 created in Section 53-10-201.

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

557 (a) shall require all applicants for Schedule A positions, in accordance with Section  
558 67-19-15, to submit to a fingerprint-based local, regional, and national criminal history  
559 background check and ongoing monitoring as a condition of employment; and

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

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

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

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

567 (4) The governing authority shall require that an individual required to submit to a  
568 background check under Subsection (3) provide a signed waiver on a form provided by the  
569 governing authority that meets the requirements of Subsection 53-10-108(4).

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

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

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

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

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

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

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

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**