

SB0143S01 compared with SB0143

~~text~~ shows text that was in SB0143 but was deleted in SB0143S01.

Inserted text shows text that was not in SB0143 but was inserted into SB0143S01.

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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: _____

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;

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- Department of Workforce Services;
 - Division of Purchasing;
 - governor's office;
 - State Auditor;
 - 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

7-1-212, Utah Code Annotated 1953

19-1-308, Utah Code Annotated 1953

26-1-17.1, Utah Code Annotated 1953

35A-1-104.1, Utah Code Annotated 1953

59-1-206.1, Utah Code Annotated 1953

63A-2-106, Utah Code Annotated 1953

63M-2-304, Utah Code Annotated 1953

67-3-10, Utah Code Annotated 1953

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

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

7-1-212. Background checks for employees.

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

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

(a) agency information security managers;

(b) financial institutions examiners;

(c) financial institutions managers; and

(d) financial institutions specialists.

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

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

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

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

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

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

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

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

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

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

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19-1-308. Background checks for employees.

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

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

(a) administrative services managers;

(b) financial analysts;

(c) financial managers; and

(d) schedule AB and AD employees, in accordance with Section 67-19-15, in appointed positions.

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

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

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

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

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

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

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

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

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

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

26-1-17.1. Background checks for employees.

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

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

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

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

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

Section 62A-2-120;

(iii) work in areas of privacy and data security;

(iv) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; and

(v) perform audit functions, whether internal or external, on behalf of the department;
and

(b) job applicants who have been offered a position with the department and the job requirements include those described in Subsection (2)(a).

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

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

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

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

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

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

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

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

(b) determine the type of crimes and the severity that would disqualify an individual from holding a position; and

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

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

35A-1-102. Definitions.

Unless otherwise specified, as used in this title:

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

(a) Chapter 3, Employment Support Act; and

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

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

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

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

(a) Chapter 3, Employment Support Act; and

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

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

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

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

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

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- (b) the obligations of the department and the client; and
- (c) the result if an obligation is not fulfilled by the department or the client.

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

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

(10) "Public assistance" means:

- (a) services or benefits provided under Chapter 3, Employment Support Act;
- (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
- (c) foster care maintenance payments provided from the General Fund or under Title IV-E of the Social Security Act;

(d) SNAP benefits; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

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

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

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

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

(a) provide personal protection;

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

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

(d) carry out the activities of daily living;

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

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(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(b) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice;

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

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

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

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

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

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

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

~~[(ii)]~~ (g) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees;

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

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

(i) employees;

(ii) applicants for employment;

(iii) volunteers; and

(iv) contract employees;

(i) ~~{the }~~ governor's office for the purpose of conducting a background check on the following individuals:

(i) cabinet members;

(ii) judicial applicants; and

~~{ii}~~ (iii) members of boards, committees, and commissions appointed by the governor;

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

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

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

(4) (a) Before requesting information ~~[under ~~{}~~ Subsection (2)(g)]~~, a qualifying entity

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~~{must}~~ [must] under Subsection (2)(c), state agency, other agency or individual described in Subsections (2)(~~(b)~~d) through (i) ~~{, an entity, state agency}~~, or the governor's office shall obtain a signed waiver from the person whose information is requested.

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

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

(ii) who will see the information; and

(iii) how the information will be used.

(c) ~~{An}~~ A qualifying entity ~~{authorized}~~ under Subsection (2)(c), state agency, other agency or individual described in Subsections (2)(d) through (g), or the governor's office that submits a request for a noncriminal justice name based background check of local databases to the bureau shall provide to the bureau:

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

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

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

(d) ~~{An entity, state agency, or}~~ A qualifying entity under Subsection (2)(c), state agency, other agency or individual described in Subsections (2)(d) through (g), or the governor's office ~~{authorized under Subsections (2)(b) through (i)}~~ that submits a request for a WIN database check to the bureau shall provide to the bureau:

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

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

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

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

~~{(e)}~~ (e) Information received by ~~{}~~ a qualifying entity under Subsection (2)~~(g)~~ ~~{}~~ ~~{an entity, state agency, or}~~ (c), state agency, other agency or individual described in Subsections (2)(d) through (i), or the governor's office ~~{under Subsections (2)(b) through (i)}~~ may only be:

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

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

~~— [(d)] (f) [A person] }[-]; and~~

(iii) used for the purposes disclosed in the waiver signed in accordance with Subsection

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(4)(b).

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

~~[(e)]~~ (g) ~~{}~~ A qualifying ~~{}~~ An entity under Subsection (2)(c), state agency, other agency or individual described in Subsections (2)(d) through (i), or the governor's office that obtains background check information ~~[under {}]~~ Subsection (2)(g) ~~{}~~ Subsections (2)(b) through (i) shall provide the ~~[employee or employment applicant]~~ subject of the background check an opportunity to:

- (i) review the information received as provided under Subsection (9); and
- (ii) respond to any information received.

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

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

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

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

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

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

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the state agency or the agency's designee.

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

- (a) that have been declined for prosecution;
- (b) that have been dismissed; or
- (c) regarding which ~~any~~ a person ~~is~~ an individual has been acquitted.

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

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

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

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

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

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

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

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

(a) shall be charged for access; and

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

(11) Before providing information requested under this section, the division shall give

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priority to criminal justice agencies needs.

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

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

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

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

(b) ~~{} A qualifying entity~~ ~~[or an entity described in Subsection (2)(b)]~~ ~~{ An entity}~~ under Subsection (2)(c), state agency, ~~{ for the governor's office}~~ other agency or individual described in Subsections (2)(~~{ b}~~ d) through (~~{ i}~~ g), or the governor's office may only make a request under Subsection (13)(a) if the entity:

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

and

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

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

(15) (a) [~~{ The}~~ For a noncriminal justice applicant]:

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(i) the applicant fingerprint card fee under Subsection (2) is \$20[-]; and

(ii) [~~The~~] the name background check fee under Subsection (2) is \$15.

[~~(iii)~~] (b) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

[~~(iv)~~] (c) The fees described in [~~this Subsection~~] Subsections (15)(a) and (b) remain in effect until changed by the division through the process under Section 63J-1-504.

[~~(b)~~] (d) Funds generated under this Subsection (15) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.

[~~(e)~~] (e) The division may collect fees charged by an outside agency for services required under this section.

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

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

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

(1) As used in this section:

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

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

6103.

(2) The commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The commission shall:

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

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

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

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

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

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

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

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

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

(9) Upon receipt of criminal history information under Subsection 53-10-108(13) regarding an individual described in Subsection (2)(b), the commission shall deny the employee or contractor access to:

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

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

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

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

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

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

(a) assistant directors;

(b) contract analysts; and

(c) purchasing agents.

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

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

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meets the requirements of Subsection 53-10-108(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) physical or electronic access to public funds;

(B) performing internal control functions or accounting;

(C) creating reports on public funds; or

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

(iv) "State agency" means:

(A) an executive branch agency; or

(B) a state educational institution with the exception of an institution defined in Subsection 53B-1-102(1).

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

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

(ii) consent to a criminal background check by:

(A) the Federal Bureau of Investigation;

(B) the Utah Bureau of Criminal Identification; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 11. Section 67-3-10 is enacted to read:

67-3-10. Background checks for employees.

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

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

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

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

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

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

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

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

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

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

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

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