

BACKGROUND CHECK INFORMATION RETENTION

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill addresses the retention of background check information for certain licenses.

Highlighted Provisions:

This bill:

▶ addresses the retention of background check information for emergency medical service personnel; and

▶ addresses the retention of background check information for certain individuals associated with child care centers.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-8a-310, as last amended by Laws of Utah 2017, Chapter 326

26-39-404, as last amended by Laws of Utah 2019, Chapter 160

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

Section 1. Section **26-8a-310** is amended to read:



28 **26-8a-310. Background clearance for emergency medical service personnel.**

29 (1) The department shall determine whether to grant background clearance for an
30 individual seeking licensure under Section 26-8a-302 from whom it receives:

31 (a) the individual's social security number, fingerprints, and other personal
32 identification information specified by the department under Subsection (4); and

33 (b) any fees established by the department under Subsection (10).

34 (2) The department shall determine whether to deny or revoke background clearance
35 for individuals for whom it has previously granted background clearance.

36 (3) The department shall determine whether to grant, deny, or revoke background
37 clearance for an individual based on an initial and ongoing evaluation of information the
38 department obtains under Subsections (5) and (11), which, at a minimum, shall include an
39 initial criminal background check of state, regional, and national databases using the
40 individual's fingerprints.

41 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
42 Administrative Rulemaking Act, that specify:

43 (a) the criteria the department will use under Subsection (3) to determine whether to
44 grant, deny, or revoke background clearance; and

45 (b) the other personal identification information an individual seeking licensure under
46 Section 26-8a-302 must submit under Subsection (1).

47 (5) To determine whether to grant, deny, or revoke background clearance, the
48 department may access and evaluate any of the following:

49 (a) Department of Public Safety arrest, conviction, and disposition records described in
50 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
51 information in state, regional, and national records files;

52 (b) adjudications by a juvenile court of committing an act that if committed by an adult
53 would be a felony or misdemeanor, if:

54 (i) the applicant is under 28 years of age; or

55 (ii) the applicant:

56 (A) is over 28 years of age; and

57 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in
58 abeyance or diversion agreement for a felony or misdemeanor;

59 (c) juvenile court arrest, adjudication, and disposition records, other than those under
60 Subsection (5)(b), as allowed under Section [78A-6-209](#);

61 (d) child abuse or neglect findings described in Section [78A-6-323](#);

62 (e) the Department of Human Services' Division of Child and Family Services
63 Licensing Information System described in Section [62A-4a-1006](#);

64 (f) the Department of Human Services' Division of Aging and Adult Services database
65 of reports of vulnerable adult abuse, neglect, or exploitation, described in Section [62A-3-311.1](#);

66 (g) Division of Occupational and Professional Licensing records of licensing and
67 certification under Title 58, Occupations and Professions;

68 (h) records in other federal criminal background databases available to the state; and

69 (i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance,
70 pending diversion agreements, or dispositions.

71 (6) Except for the Department of Public Safety, an agency may not charge the
72 department for information accessed under Subsection (5).

73 (7) When evaluating information under Subsection (3), the department shall classify a
74 crime committed in another state according to the closest matching crime under Utah law,
75 regardless of how the crime is classified in the state where the crime was committed.

76 (8) The department shall adopt measures to protect the security of information it
77 accesses under Subsection (5), which shall include limiting access by department employees to
78 those responsible for acquiring, evaluating, or otherwise processing the information.

79 (9) The department may disclose personal identification information it receives under
80 Subsection (1) to the Department of Human Services to verify that the subject of the
81 information is not identified as a perpetrator or offender in the information sources described in
82 Subsections (5)(d) through (f).

83 (10) The department may charge fees, in accordance with Section [63J-1-504](#), to pay
84 for:

85 (a) the cost of obtaining, storing, and evaluating information needed under Subsection
86 (3), both initially and on an ongoing basis, to determine whether to grant, deny, or revoke
87 background clearance; and

88 (b) other department costs related to granting, denying, or revoking background
89 clearance.

90 (11) The Criminal Investigations and Technical Services Division within the
91 Department of Public Safety shall:

92 (a) retain, separate from other division records, personal information under Subsection
93 (1), including any fingerprints sent to it by the Department of Health; and

94 (b) notify the Department of Health upon receiving notice that an individual for whom
95 personal information has been retained is the subject of:

96 (i) a warrant for arrest;

97 (ii) an arrest;

98 (iii) a conviction, including a plea in abeyance; or

99 (iv) a pending diversion agreement.

100 (12) The department shall use the Direct Access Clearance System database created
101 under Section 26-21-209 to manage information about the background clearance status of each
102 individual for whom the department is required to make a determination under Subsection (1).

103 (13) Clearance granted for an individual licensed under Section H→ [26-8-302]

103a 26-8a-302 ←H is valid until

104 two years after the day on which the individual is no longer licensed in Utah as emergency
105 medical service personnel.

106 Section 2. Section 26-39-404 is amended to read:

107 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**
108 **costs.**

109 (1) (a) Each exempt provider, except as provided in Subsection (1)(c), and each person
110 requesting a residential certificate or to be licensed or to renew a license under this chapter
111 shall submit to the department the name and other identifying information, which shall include
112 fingerprints, of existing, new, and proposed:

113 (i) owners;

114 (ii) directors;

115 (iii) members of the governing body;

116 (iv) employees;

117 (v) providers of care;

118 (vi) volunteers, except parents of children enrolled in the programs; and

119 (vii) all adults residing in a residence where child care is provided.

120 (b) (i) The Utah Division of Criminal Investigation and Technical Services within the

121 Department of Public Safety shall process the information required under Subsection (1)(a) to
122 determine whether the individual has been convicted of any crime.

123 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit
124 fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record
125 check.

126 (iii) A person required to submit information to the department under Subsection (1)
127 shall pay the cost of conducting the record check described in this Subsection (1)(b).

128 (c) An exempt provider who provides care to a qualifying child as part of a program
129 administered by an educational institution that is regulated by the State Board of Education is
130 not subject to this Subsection (1), unless required by the Child Care and Development Block
131 Grant, 42 U.S.C. Secs. 9857-9858r.

132 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a
133 license under this chapter shall submit to the department the name and other identifying
134 information of any person age 12 through 17 who resides in the residence where the child care
135 is provided. The identifying information required for a person age 12 through 17 does not
136 include fingerprints.

137 (b) The department shall access the juvenile court records to determine whether a
138 person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of
139 committing an act which if committed by an adult would be a felony or misdemeanor if:

140 (i) the person described in Subsection (1) is under the age of 28; or

141 (ii) the person described in Subsection (1) is:

142 (A) over the age of 28; and

143 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in
144 abeyance or diversion agreement for a felony or misdemeanor.

145 (3) Except as provided in Subsections (4) and (5), a licensee under this chapter or an
146 exempt provider may not permit a person who has been convicted, has pleaded no contest, or is
147 currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor,
148 or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of
149 committing an act which if committed by an adult would be a felony or a misdemeanor, to:

150 (a) provide child care;

151 (b) provide volunteer services for a child care program or an exempt provider;

152 (c) reside at the premises where child care is provided; or

153 (d) function as an owner, director, or member of the governing body of a child care
154 program or an exempt provider.

155 (4) (a) The department may, by rule, exempt the following from the restrictions of
156 Subsection (3):

157 (i) specific misdemeanors; and

158 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be
159 misdemeanors.

160 (b) In accordance with criteria established by rule, the executive director may consider
161 and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions
162 of Subsection (3).

163 (5) The restrictions of Subsection (3) do not apply to the following:

164 (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a
165 date 10 years or more before the date of the criminal history check described in this section; or

166 (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense
167 adjudicated in juvenile court on a date 10 years or more before the date of the criminal history
168 check described in this section.

169 (6) The department may retain background check information submitted to the
170 department for up to one year after the day on which the covered individual is no longer
171 associated with a Utah child care provider.