

HB0471S02 compared with HB0471S01

~~text~~ shows text that was in HB0471S01 but was deleted in HB0471S02.

text shows text that was not in HB0471S01 but was inserted into HB0471S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative **Dan N. Johnson** proposes the following substitute bill:

PUBLIC LIBRARY BACKGROUND CHECK REQUIREMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan N. Johnson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides for criminal background checks of librarians and employees of public libraries.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires criminal background checks for librarians and employees of public libraries who have access to children;
- ▶ grants rulemaking authority to the State Library Board in relation to the criminal background checks;
- ▶ provides for the due process of individuals subject to a criminal background check;
- ▶ provides for fiscal assistance to smaller counties and municipalities to conduct

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background checks; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

9-7-101, as last amended by Laws of Utah 2019, Chapter 221

9-7-205, as last amended by Laws of Utah 2017, Chapter 48

9-7-407, as last amended by Laws of Utah 2019, Chapter 221

9-7-507, as last amended by Laws of Utah 2019, Chapter 221

ENACTS:

9-7-205.5, Utah Code Annotated 1953

9-7-205.6, Utah Code Annotated 1953

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

Section 1. Section **9-7-101** is amended to read:

9-7-101. Definitions.

As used in this chapter:

(1) "Authorized entity" means a person who has authority to hire or fire a librarian or a library employee.

~~[(1)]~~ (2) "Board" means the State Library Board created in Section 9-7-204.

(3) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety created in Section 53-10-201.

~~[(2)]~~ (4) "Division" means the State Library Division.

~~[(3)]~~ (5) "Library board" means the library board of directors appointed locally as authorized by Section 9-7-402 or 9-7-502 and which exercises general policy authority for library services within a city or county of the state, regardless of the title by which the board is known locally.

(6) "Personal identifying information" includes:

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- (a) current name;
- (b) former names;
- (c) nicknames;
- (d) aliases;
- (e) date of birth;
- (f) address;
- (g) telephone number;
- (h) driver license number or other government-issued identification number;
- (i) social security number; and
- (j) fingerprints.

~~[(4)]~~ (7) "Physical format" means a transportable medium in which analog or digital information is published, such as print, microform, magnetic disk, or optical disk.

~~[(5)]~~ (8) "Policy" means the public library online access policy adopted by a library board to meet the requirements of Section 9-7-215.

~~[(6)]~~ (9) "Political subdivision" means a county, city, town, school district, public transit district, redevelopment agency, or special improvement or taxing district.

~~[(7)]~~ (10) "State agency" means:

- (a) the state; or
- (b) an office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

~~[(8)]~~ (11) (a) "State publication" means a book, compilation, directory, document, contract or grant report, hearing memorandum, journal, law, legislative bill, magazine, map, monograph, order, ordinance, pamphlet, periodical, proceeding, public memorandum, resolution, register, rule, report, statute, audiovisual material, electronic publication, micrographic form and tape or disc recording regardless of format or method of reproduction, issued or published by a state agency or political subdivision for distribution.

(b) "State publication" does not include correspondence, internal confidential publications, office memoranda, university press publications, or publications of the state historical society.

Section 2. Section **9-7-205** is amended to read:

9-7-205. Duties of board and director.

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- (1) The board shall:
 - (a) promote, develop, and organize a state library and make provisions for its housing;
 - (b) promote and develop library services throughout the state in cooperation with other state or municipal libraries, schools, or other agencies wherever practical;
 - (c) promote the establishment of district, regional, or multicounty libraries as conditions within particular areas of the state may require;
 - (d) supervise the books and materials of the state library and require the keeping of careful and complete records of the condition and affairs of the state library;
 - (e) establish policies for the administration of the division and for the control, distribution, and lending of books and materials to those libraries, institutions, groups, or individuals entitled to them under this chapter;
 - (f) serve as the agency of the state for the administration of state or federal funds that may be appropriated to further library development within the state;
 - (g) aid and provide general advisory assistance in the development of statewide school library service and encourage contractual and cooperative relations between school and public libraries;
 - (h) give assistance, advice, and counsel to all tax-supported libraries within the state and to all communities or persons proposing to establish a tax-supported library and conduct courses and institutes on the approved methods of operation, selection of books, or other activities necessary to the proper administration of a library;
 - (i) furnish or contract for the furnishing of library or information service to state officials, state departments, or any groups that in the opinion of the director warrant the furnishing of those services, particularly through the facilities of traveling libraries to those parts of the state otherwise inadequately supplied by libraries;
 - (j) where sufficient need exists and if the director considers it advisable, establish and maintain special departments in the state library to provide services for the blind, visually impaired, persons with disabilities, and professional, occupational, and other groups;
 - (k) administer a depository library program by collecting state publications, and providing a bibliographic information system;
 - (l) require the collection of information and statistics necessary to the work of the state library and the distribution of findings and reports;

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(m) make any report concerning the activities of the state library to the governor as the governor may require; [and]

(n) develop standards for public libraries[-]; and

(o) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:

(i) procedures for gathering, submitting, and reviewing criminal background checks of librarians and library employees of city and county libraries;

(ii) criteria for disqualifying an individual based on the individual's criminal history;

(iii) the process for complying with the due process requirements described in Section 9-7-205.6; and

(iv) procedures for a librarian or library employee to self-report a conviction, an arrest, or offense information.

(2) The director shall, under the policy direction of the board, carry out the responsibilities under Subsection (1).

Section 3. Section **9-7-205.5** is enacted to read:

9-7-205.5. Background checks for librarians and library employees -- Bureau responsibilities.

The bureau shall:

(1) upon request from an authorized entity, register the fingerprints submitted by the authorized entity as part of a background check with:

(a) the WIN Database rap back system, or any successor system; and

(b) the rap back system maintained by the Federal Bureau of Investigation;

(2) notify an authorized entity when a new entry is made against an individual whose fingerprints are registered with the rap back systems described in Subsection (1)(a) regarding:

(a) an alleged offense; or

(b) a conviction, including a plea in abeyance;

(3) assist authorized entities to identify the appropriate privacy risk mitigation strategy that is to be used to ensure that the authorized entity only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and

(4) collaborate with the board to provide training to authorized entities on notification procedures and privacy risk mitigation strategies.

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Section 4. Section 9-7-205.6 is enacted to read:

9-7-205.6. Due process -- Review of criminal history information -- Financial assistance.

(1) (a) In accordance with Section 53-10-108, an authorized entity shall provide an individual an opportunity to review and respond to any criminal history information received under this chapter.

(b) If an authorized entity disqualifies an individual as a result of criminal history information received under this chapter, an individual may request a review of:

(i) the information received; and

(ii) the reasons for the disqualification.

(c) An authorized entity shall provide an individual described in Subsection (1)(b) with written notice of:

(i) the reasons for the disqualification; and

(ii) the individual's right to request a review of the disqualification.

(2) An authorized entity shall make decisions regarding criminal history information for the individuals subject to the background check requirements in accordance with:

(a) Subsection (3);

(b) administrative procedures established by the authorized entity; and

(c) rules established by the state board.

(3) When making decisions regarding individuals subject to background checks under this chapter, an authorized entity shall consider:

(a) any convictions, including pleas in abeyance;

(b) any matters involving a felony; and

(c) any matters involving an alleged:

(i) sexual offense;

(ii) class A misdemeanor drug offense;

(iii) offense against the individual under Title 76, Chapter 5, Offenses Against the

Person;

(iv) class A misdemeanor property offense that is alleged to have occurred within the previous three years; and

(v) any other type of criminal offense, if more than one occurrence of the same type of

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offense is alleged to have occurred within the previous eight years.

(4) Within appropriations made by the Legislature for this purpose, the State Library Board shall reimburse a county of the fifth or sixth class, and a city of the fifth or sixth class, for the costs of conducting a background check required under this chapter.

Section 5. Section **9-7-407** is amended to read:

9-7-407. Librarian and other personnel.

(1) The library board of directors shall appoint a competent ~~[person]~~ individual as librarian to have immediate charge of the library with those duties and compensation for services that ~~[it]~~ the library board of directors determines.

~~(2)~~ (2) The librarian shall act as the executive officer for the library board.

~~[(2)]~~ (3) The library board shall appoint, upon the recommendation of the librarian, other personnel as needed.

(4) (a) An authorized entity shall require the librarian, and each employee of the library who has access to children at the library, to submit to a nationwide criminal background check and ongoing monitoring as required in this section.

(b) A librarian or library employee described in Subsection (4)(a) who began employment before May 4, 2022, shall comply with Subsection (4)(a) before July 1, 2022.

(c) Except as provided in Subsection (4)(d), an individual who will begin employment as a librarian or a library employee described in Subsection (4)(a) on or after May 4, 2022, shall comply with Subsection (4)(a) before beginning employment.

(d) An individual described in Subsection (4)(c) may begin employment before the results of the criminal background check are received if the individual is visually monitored by an individual who has passed the criminal background check while the individual awaiting the results of the criminal background check is present in the library during hours of operation.

(5) To conduct a background check under this section, an authorized entity shall:

(a) collect from the individual the individual's personal identifying information, and consent, on a form specified by the State Library Board, for:

(i) an initial fingerprint-based background check by the FBI and bureau upon submission of the application;

(ii) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 9-7-205.5; and

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(iii) disclosure of any criminal history information to the authorized entity;
(b) submit the individual's personal identifying information to the bureau for:
(i) an initial fingerprint-based background check by the FBI and bureau; and
(ii) ongoing monitoring through registration with the systems described in Section 9-7-205.5 if the results of the initial background check do not contain disqualifying criminal history information as determined by the authorized entity in accordance with Section 9-7-205.6 and rules made by the State Library Board under Subsection 9-7-205(1)(o);

(c) identify the appropriate privacy risk mitigation strategy that will be used to ensure that an authorized entity only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and

(d) notify the authorized entity upon receipt of any criminal history information reported on the individual.

(6) An individual subject to the background check requirements under this section shall self-report conviction, arrest, or offense information in accordance with rules made by the State Library Board under Subsection 9-7-205(1)(o).

Section 6. Section **9-7-507** is amended to read:

9-7-507. Librarian and other personnel.

(1) (a) The library board of directors shall recommend to the county executive for appointment a competent person to serve as librarian.

(b) The county executive shall, within 30 days of the recommendation, either make the appointment or request that the library board submit another recommendation.

(c) The librarian shall be an employee of the county subject to the personnel policies, procedures, and compensation plans approved by the county executive and county legislative body.

(d) The librarian shall act as the executive officer for the library board.

(2) (a) All library personnel are employees of the county.

(b) The librarian or the librarian's designee shall hire library personnel in accordance with the county merit system, personnel policies and procedures, and compensation plans approved by the county executive and county legislative body.

(3) As used in this section "librarian" means the county library director.

(4) **Except as provided in Subsection (7):**

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(a) ~~{An}~~an authorized entity shall require the librarian, and each employee of the library who has access to children at the library, to submit to a nationwide criminal background check and ongoing monitoring as required in this section~~{.};~~;

(b) ~~{A}~~a librarian or library employee described in Subsection (4)(a) who began employment before May 4, 2022, shall comply with Subsection (4)(a) before July 1, 2022~~{.};~~;

(c) ~~{Except}~~except as provided in Subsection (4)(d), an individual who will begin employment as a librarian or a library employee described in Subsection (4)(a) on or after May 4, 2022, shall comply with Subsection (4)(a) before beginning employment~~{.};~~ and

(d) ~~{An}~~an individual described in Subsection (4)(c) may begin employment before the results of the criminal background check are received if the individual is visually monitored by an individual who has passed the criminal background check while the individual awaiting the results of the criminal background check is present in the library during hours of operation.

(5) ~~{To}~~Except as provided in Subsection (7), to conduct a background check under this section, an authorized entity shall:

(a) collect from the individual the individual's personal identifying information, and consent, on a form specified by the State Library Board, for:

(i) an initial fingerprint-based background check by the FBI and bureau upon submission of the application;

(ii) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 9-7-205.5; and

(iii) disclosure of any criminal history information to the authorized entity;

(b) submit the individual's personal identifying information to the bureau for:

(i) an initial fingerprint-based background check by the FBI and bureau; and

(ii) ongoing monitoring through registration with the systems described in Section 9-7-205.5 if the results of the initial background check do not contain disqualifying criminal history information as determined by the authorized entity in accordance with Section 9-7-205.6 and rules made by the State Library Board under Subsection 9-7-205(1)(o);

(c) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the authorized entity only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and

(d) notify the authorized entity upon receipt of any criminal history information

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reported on the individual.

(6) ~~(An)~~ Except as provided in Subsection (7), an individual subject to the background check requirements under this section shall self-report conviction, arrest, or offense information in accordance with rules made by the State Library Board under Subsection 9-7-205(1)(o).

(7) Subsections (4) through (6) do not apply to an authorized entity, or the librarians or employees of the authorized entity's library if, before October 1, 2022, the authorized entity has, and retains, a policy for conducting criminal background checks of librarians and of library employees who have access to children at the library.

Section 7. **Effective date.**

This bill takes effect on October 1, 2022.