

1 **EDUCATOR BACKGROUND CHECK AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Trevor Lee**

Senate Sponsor: Lincoln Fillmore



2  
3 **LONG TITLE**

4 **General Description:**

5 This bill prohibits a Local Education Agency from collecting background check fees from  
6 licensed employees and non-licensed substitute teachers.

7 **Highlighted Provisions:**

8 This bill:

- 9 ▶ defines terms;
- 10 ▶ prohibits a local education agency (LEA) from collecting background check fees from
- 11 volunteers and licensed, non-licensed, and contract employees;
- 12 ▶ allows entities to clone background information between LEAs or qualifying private
- 13 schools; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **53-5-702**, as last amended by Laws of Utah 2023, Chapter 387

22 **53E-6-901**, as renumbered and amended by Laws of Utah 2018, Chapter 1

23 **53G-5-408**, as last amended by Laws of Utah 2019, Chapter 293

24 **53G-11-401**, as last amended by Laws of Utah 2019, Chapter 293

25 **53G-11-402**, as last amended by Laws of Utah 2023, Chapter 527

26 **53G-11-403**, as last amended by Laws of Utah 2019, Chapter 293



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

29 Section 1. Section **53-5-702** is amended to read:

30 **53-5-702 . Definitions.**

31 In addition to the definitions in Section 76-10-501, as used in this part:

- 32 (1) "Active duty service member" means a person on active military duty with the United  
33 States military and includes full time military active duty, military reserve active duty,  
34 and national guard military active duty service members stationed in Utah.
- 35 (2) "Active duty service member spouse" means a person recognized by the military as the  
36 spouse of an active duty service member and who resides with the active duty service  
37 member in Utah.
- 38 (3) "Board" means the Concealed Firearm Review Board created in Section 53-5-703.
- 39 (4) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201  
40 within the Department of Public Safety.
- 41 (5) "Commissioner" means the commissioner of the Department of Public Safety.
- 42 (6) "Conviction" means criminal conduct where the filing of a criminal charge has resulted  
43 in:
- 44 (a) a finding of guilt based on evidence presented to a judge or jury;
- 45 (b) a guilty plea;
- 46 (c) a plea of nolo contendere;
- 47 (d) a plea of guilty or nolo contendere which is held in abeyance pending the successful  
48 completion of probation;
- 49 (e) a pending diversion agreement; or
- 50 (f) a conviction which has been reduced [~~pursuant to~~] in accordance with Section  
51 76-3-402.
- 52 (7) (a) "School employee" means an employee of a public school district, charter school,  
53 or private school whose duties, responsibilities, or assignments require the employee  
54 to be physically present on a school's campus at least half of the days on which  
55 school is held during a school year.
- 56 (b) "School employee" also means a substitute teacher, as defined in Section 53E-6-901.
- 57 (8) "School year" means the period of time designated by a local school board, charter  
58 school governing board, or private school as the school year for high school, middle  
59 school, or elementary school students.

60 Section 2. Section **53E-6-901** is amended to read:

61 **53E-6-901 . Substitute teachers.**

62 (1) As used in this section, "substitute teacher" means a licensed or non-licensed individual  
 63 who is employed by a school district to fill in for a regular classroom teacher during the  
 64 teacher's temporary absence from the classroom.

65 ~~(2) [A substitute teacher need not hold a license to teach, but]~~ When hiring substitute  
 66 teachers, school districts [are encouraged to hire] shall prioritize licensed [personnel]  
 67 educators as substitutes when available.

68 ~~[(2)] (3) [A person must]~~ An individual shall submit to a background check [under] in  
 69 accordance with Section 53G-11-402 prior to employment as a substitute teacher.

70 ~~[(3)] (4)~~ A teacher's position in the classroom may not be filled by [an unlicensed] a  
 71 non-licensed substitute teacher for more than a total of 20 days during any school year  
 72 unless a licensed [personnel are] educator is not available.

73 ~~[(4)] (5) [A person]~~ An individual who is ineligible to hold a license [for any reason other  
 74 than professional preparation] for reasons described in Title 53E, Chapter 6, Part 6,  
 75 License Denial and Discipline, may not serve as a substitute teacher.

76 Section 3. Section **53G-5-408** is amended to read:

77 **53G-5-408 . Criminal background checks on school personnel.**

78 The following individuals are required to submit to a criminal background check  
 79 and ongoing monitoring as provided in ~~[Section]~~ Sections 53G-11-402 and 53G-11-403:

- 80 (1) an employee of a charter school who does not hold a current Utah educator license  
 81 issued by the state board under Title 53E, Chapter 6, Education Professional Licensure;  
 82 (2) a volunteer for a charter school who is given significant unsupervised access to a  
 83 student in connection with the volunteer's assignment;  
 84 (3) a contract employee, as defined in Section 53G-11-401, who works at a charter school;  
 85 and  
 86 (4) a charter school governing board member.

87 Section 4. Section **53G-11-401** is amended to read:

88 **53G-11-401 . Definitions.**

89 As used in this part:

- 90 (1) "Authorized entity" means an LEA, qualifying private school, or the state board that is  
 91 authorized to request a background check and ongoing monitoring under this part.  
 92 (2) "Bureau" means the Bureau of Criminal Identification within the Department of Public  
 93 Safety created in Section 53-10-201.  
 94 (3) "Contract employee" means an employee of a staffing service or other entity who works  
 95 at a public or private school under a contract.

- 96 (4) "FBI" means the Federal Bureau of Investigation.
- 97 (5) (a) "License applicant" means an applicant for a license issued by the state board  
98 under Title 53E, Chapter 6, Education Professional Licensure.
- 99 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,  
100 suspended, or revoked license.
- 101 (6) "Non-licensed employee" means an employee of an LEA or qualifying private school  
102 that does not hold a current Utah educator license issued by the state board under Title  
103 53E, Chapter 6, Education Professional Licensure.
- 104 (7) "Personal identifying information" means:
- 105 (a) current name, former names, nicknames, and aliases;
- 106 (b) date of birth;
- 107 (c) address;
- 108 (d) telephone number;
- 109 (e) driver license number or other government-issued identification number;
- 110 (f) social security number; and
- 111 (g) fingerprints.
- 112 (8) "Substitute teacher" means the same as that term is defined in Section 53E-6-901.
- 113 (9) "Qualifying private school" means a private school that:
- 114 (a) enrolls students under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship  
115 Program; and
- 116 (b) is authorized to conduct fingerprint-based background checks of national crime  
117 information databases under the Adam Walsh Child Protection and Safety Act of  
118 2006, Pub. L. No. 109-248.
- 119 [~~(9)~~] (10) "Rap back system" means a system that enables authorized entities to receive  
120 ongoing status notifications of any criminal history reported on individuals whose  
121 fingerprints are registered in the system.
- 122 [~~(10)~~] (11) "WIN Database" means the Western Identification Network Database that  
123 consists of eight western states sharing one electronic fingerprint database.
- 124 Section 5. Section **53G-11-402** is amended to read:
- 125 **53G-11-402 . Background checks for non-licensed employees, contract**  
126 **employees, volunteers, and charter school governing board members.**
- 127 (1) An LEA or qualifying private school shall:
- 128 (a) require the following individuals who are 18 years old or older to submit to a  
129 nationwide criminal background check and ongoing monitoring as a condition of

- 130 employment or appointment:
- 131 (i) a non-licensed employee;
- 132 (ii) a contract employee;
- 133 (iii) except for an officer or employee of a cooperating employer under an internship
- 134 safety agreement under Section 53G-7-904, a volunteer who will be given
- 135 significant unsupervised access to a student in connection with the volunteer's
- 136 assignment; and
- 137 (iv) a charter school governing board member;
- 138 (b) collect the following from an individual required to submit to a background check
- 139 under Subsection (1)(a):
- 140 (i) personal identifying information;
- 141 (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(15); and
- 142 (iii) consent, on a form specified by the LEA or qualifying private school, for:
- 143 (A) an initial fingerprint-based background check by the FBI and the bureau upon
- 144 submission of the application; and
- 145 (B) retention of personal identifying information for ongoing monitoring through
- 146 registration with the systems described in Section 53G-11-404;
- 147 (c) submit the individual's personal identifying information to the bureau for:
- 148 (i) an initial fingerprint-based background check by the FBI and the bureau; and
- 149 (ii) ongoing monitoring through registration with the systems described in Section
- 150 53G-11-404 if the results of the initial background check do not contain
- 151 disqualifying criminal history information as determined by the LEA or qualifying
- 152 private school in accordance with Section 53G-11-405; and
- 153 (d) identify the appropriate privacy risk mitigation strategy to be used to ensure the LEA
- 154 or qualifying private school only receives notifications for individuals with whom the
- 155 LEA or qualifying private school maintains an authorizing relationship.
- 156 (2) (a) An LEA or qualifying private school may not require an individual to pay the fee
- 157 described in Subsection (1)(b)(ii) unless the individual:
- 158 [~~(a)~~] (i) has passed an initial review; and
- 159 [~~(b)~~] (ii) is one of a pool of no more than five candidates for the position.
- 160 (b) An LEA may not require a non-licensed employee, contract employee, or volunteer
- 161 to pay the fee described in Subsection (1)(b)(ii).
- 162 (3) An LEA or qualifying private school that receives criminal history information about a
- 163 licensed educator under Subsection 53G-11-403(5) shall assess the employment status of

- 164 the licensed educator as provided in Section 53G-11-405.
- 165 (4) An LEA or qualifying private school may establish a policy to exempt an individual  
166 described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under  
167 Subsection (1) if the individual is being temporarily employed or appointed.
- 168 (5) An LEA or qualifying private school shall provide another LEA or qualifying private  
169 school that requires a national background check, as described in Subsection 53G-11-402  
170 (1)(a), an opportunity to clone the subscription or data from the FBI Rap Back System,  
171 as those terms are defined in Section 53-10-108, for employees or volunteers who are  
172 relocating, providing temporary volunteer services, or under contract, and in accordance  
173 with Section 53-10-108.

174 Section 6. Section **53G-11-403** is amended to read:

175 **53G-11-403 . Background checks for licensed educators.**

176 The state board shall:

- 177 (1) require a license applicant to submit to a nationwide criminal background check and  
178 ongoing monitoring as a condition for licensing;
- 179 (2) collect the following from an applicant:
- 180 (a) personal identifying information; and  
181 ~~[(b) a fee described in Subsection 53-10-108(15); and]~~  
182 ~~[(e)]~~ (b) consent, on a form specified by the state board, for:
- 183 (i) an initial fingerprint-based background check by the FBI and bureau upon  
184 submission of the application;
- 185 (ii) retention of personal identifying information for ongoing monitoring through  
186 registration with the systems described in Section 53G-11-404; and
- 187 (iii) disclosure of any criminal history information to the individual's employing LEA  
188 or qualifying private school;
- 189 (3) submit an applicant's personal identifying information to the bureau for:
- 190 (a) an initial fingerprint-based background check by the FBI and bureau; and  
191 (b) ongoing monitoring through registration with the systems described in Section  
192 53G-11-404 if the results of the initial background check do not contain disqualifying  
193 criminal history information as determined by the state board in accordance with  
194 Section 53G-11-405;
- 195 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure that  
196 the state board only receives notifications for individuals with whom the state board  
197 maintains an authorizing relationship;

198 (5) notify the employing LEA or qualifying private school upon receipt of any criminal  
199 history information reported on a licensed educator employed by the LEA or qualifying  
200 private school; and

201 (6) (a) collect the information described in Subsection (2) from individuals who were  
202 licensed prior to July 1, 2015, by the individual's next license renewal date; and  
203 (b) submit the information to the bureau for ongoing monitoring through registration  
204 with the systems described in Section 53G-11-404.

205 (7) An LEA or qualifying private school shall provide another LEA or qualifying private  
206 school that requires the same or less than a national background check, as described in  
207 Subsection 53G-11-402(1)(a), an opportunity to clone the subscription or data from the  
208 FBI Rap Back System, as those terms are defined in Section 53-10-108, for employees  
209 or volunteers who are relocating, providing temporary volunteer services, or under  
210 contract, and in accordance with Section 53-10-108.

211 Section 7. **Effective date.**

212 This bill takes effect on May 1, 2024.