

EDUCATOR BACKGROUND CHECK AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Trevor Lee

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ prohibits a Local Education Agency from collecting background check fees from licensed employees and non-licensed substitute teachers.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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
33 United 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
36 the 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
43 resulted 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
53 school, or private school whose duties, responsibilities, or assignments require the employee to
54 be physically present on a school's campus at least half of the days on which school is held
55 during a school year.

56 (b) "School employee" also means a substitute teacher, as defined in Section
57 [53E-6-901](#).

58 (8) "School year" means the period of time designated by a local school board, charter

59 school governing board, or private school as the school year for high school, middle school, or
60 elementary school students.

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

62 **53E-6-901. Substitute teachers.**

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

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

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

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

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

77 Section 3. Section **53G-11-401** is amended to read:

78 **53G-11-401. Definitions.**

79 As used in this part:

80 (1) "Authorized entity" means an LEA, qualifying private school, or the state board that
81 is authorized to request a background check and ongoing monitoring under this part.

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

84 (3) "Contract employee" means an employee of a staffing service or other entity who
85 works at a public or private school under a contract.

86 (4) "FBI" means the Federal Bureau of Investigation.

87 (5) (a) "License applicant" means an applicant for a license issued by the state board
88 under Title 53E, Chapter 6, Education Professional Licensure.

89 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,

90 suspended, or revoked license.

91 (6) "Non-licensed employee" means an employee of an LEA or qualifying private
92 school that does not hold a current Utah educator license issued by the state board under Title
93 53E, Chapter 6, Education Professional Licensure.

94 (7) "Personal identifying information" means:

95 (a) current name, former names, nicknames, and aliases;

96 (b) date of birth;

97 (c) address;

98 (d) telephone number;

99 (e) driver license number or other government-issued identification number;

100 (f) social security number; and

101 (g) fingerprints.

102 (8) "Substitute teacher" means the same as that term is defined in Subsection
103 53E-6-901.

104 (9) "Qualifying private school" means a private school that:

105 (a) enrolls students under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship
106 Program; and

107 (b) is authorized to conduct fingerprint-based background checks of national crime
108 information databases under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L.
109 No. 109-248.

110 [~~9~~] (10) "Rap back system" means a system that enables authorized entities to receive
111 ongoing status notifications of any criminal history reported on individuals whose fingerprints
112 are registered in the system.

113 [~~10~~] (11) "WIN Database" means the Western Identification Network Database that
114 consists of eight western states sharing one electronic fingerprint database.

115 Section 4. Section **53G-11-402** is amended to read:

116 **53G-11-402. Background checks for non-licensed employees, contract employees,**
117 **volunteers, and charter school governing board members.**

118 (1) An LEA or qualifying private school shall:

119 (a) require the following individuals who are 18 years old or older to submit to a
120 nationwide criminal background check and ongoing monitoring as a condition of employment

121 or appointment:

122 (i) a non-licensed employee;

123 (ii) a contract employee;

124 (iii) except for an officer or employee of a cooperating employer under an internship

125 safety agreement under Section 53G-7-904, a volunteer who will be given significant

126 unsupervised access to a student in connection with the volunteer's assignment; and

127 (iv) a charter school governing board member;

128 (b) collect the following from an individual required to submit to a background check

129 under Subsection (1)(a):

130 (i) personal identifying information;

131 (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(15); and

132 (iii) consent, on a form specified by the LEA or qualifying private school, for:

133 (A) an initial fingerprint-based background check by the FBI and the bureau upon

134 submission of the application; and

135 (B) retention of personal identifying information for ongoing monitoring through

136 registration with the systems described in Section 53G-11-404;

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

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

139 (ii) ongoing monitoring through registration with the systems described in Section

140 53G-11-404 if the results of the initial background check do not contain disqualifying criminal

141 history information as determined by the LEA or qualifying private school in accordance with

142 Section 53G-11-405; and

143 (d) identify the appropriate privacy risk mitigation strategy to be used to ensure the

144 LEA or qualifying private school only receives notifications for individuals with whom the

145 LEA or qualifying private school maintains an authorizing relationship.

146 (2) (a) An LEA or qualifying private school may not require an individual to pay the

147 fee described in Subsection (1)(b)(ii) unless the individual:

148 ~~(a)~~ (i) has passed an initial review; and

149 ~~(b)~~ (ii) is one of a pool of no more than five candidates for the position.

150 (b) An LEA may not require a non-licensed substitute teacher to pay the fee described

151 in Subsection (1)(b)(ii).

152 (3) An LEA or qualifying private school that receives criminal history information
153 about a licensed educator under Subsection 53G-11-403(5) shall assess the employment status
154 of the licensed educator as provided in Section 53G-11-405.

155 (4) An LEA or qualifying private school may establish a policy to exempt an individual
156 described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if
157 the individual is being temporarily employed or appointed.

158 Section 5. Section 53G-11-403 is amended to read:

159 **53G-11-403. Background checks for licensed educators.**

160 The state board shall:

161 (1) require a license applicant to submit to a nationwide criminal background check
162 and ongoing monitoring as a condition for licensing;

163 (2) collect the following from an applicant:

164 (a) personal identifying information; and

165 [~~(b) a fee described in Subsection 53-10-108(15); and~~]

166 [(~~e~~)] (b) consent, on a form specified by the state board, for:

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

169 (ii) retention of personal identifying information for ongoing monitoring through
170 registration with the systems described in Section 53G-11-404; and

171 (iii) disclosure of any criminal history information to the individual's employing LEA
172 or qualifying private school;

173 (3) submit an applicant's personal identifying information to the bureau for:

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

175 (b) ongoing monitoring through registration with the systems described in Section
176 53G-11-404 if the results of the initial background check do not contain disqualifying criminal
177 history information as determined by the state board in accordance with Section 53G-11-405;

178 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure
179 that the state board only receives notifications for individuals with whom the state board
180 maintains an authorizing relationship;

181 (5) notify the employing LEA or qualifying private school upon receipt of any criminal
182 history information reported on a licensed educator employed by the LEA or qualifying private

183 school; and

184 (6) (a) collect the information described in Subsection (2) from individuals who were
185 licensed prior to July 1, 2015, by the individual's next license renewal date; and

186 (b) submit the information to the bureau for ongoing monitoring through registration
187 with the systems described in Section [53G-11-404](#).

188 Section 6. **Effective date.**

189 This bill takes effect on May 1, 2024.