

Representative Karianne Lisonbee proposes the following substitute bill:

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;
- ▶ requires school districts to prioritize hiring licensed substitutes as teachers when available;
- ▶ prohibits a Local Education Agency (LEA) from collecting background check fees from licensed employees and non-licensed substitute teachers;
- ▶ requires an LEA or qualified private school to enter into an agreement to duplicate criminal background check data to another LEA or qualified private school;
- ▶ requires the Bureau of Criminal Identification to create a process to allow LEAs to access concealed carry permit information to satisfy certain employee background check requirements; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **53-5-702**, as last amended by Laws of Utah 2023, Chapter 387
- 31 **53E-6-901**, as renumbered and amended by Laws of Utah 2018, Chapter 1
- 32 **53G-5-408**, as last amended by Laws of Utah 2019, Chapter 293
- 33 **53G-11-401**, as last amended by Laws of Utah 2019, Chapter 293
- 34 **53G-11-402**, as last amended by Laws of Utah 2023, Chapter 527
- 35 **53G-11-403**, as last amended by Laws of Utah 2019, Chapter 293
- 36 **53G-11-404**, as last amended by Laws of Utah 2019, Chapter 293
- 37 **63I-1-276**, as last amended by Laws of Utah 2023, Chapter 398
- 38 **76-10-526.1**, as enacted by Laws of Utah 2023, Chapter 398



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

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

42 **53-5-702. Definitions.**

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

44 (1) "Active duty service member" means a person on active military duty with the
45 United States military and includes full time military active duty, military reserve active duty,
46 and national guard military active duty service members stationed in Utah.

47 (2) "Active duty service member spouse" means a person recognized by the military as
48 the spouse of an active duty service member and who resides with the active duty service
49 member in Utah.

50 (3) "Board" means the Concealed Firearm Review Board created in Section **53-5-703**.

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

53 (5) "Commissioner" means the commissioner of the Department of Public Safety.

54 (6) "Conviction" means criminal conduct where the filing of a criminal charge has
55 resulted in:

56 (a) a finding of guilt based on evidence presented to a judge or jury;

- 57 (b) a guilty plea;
 58 (c) a plea of nolo contendere;
 59 (d) a plea of guilty or nolo contendere which is held in abeyance pending the successful
 60 completion of probation;
 61 (e) a pending diversion agreement; or
 62 (f) a conviction which has been reduced ~~[pursuant to]~~ in accordance with Section
 63 76-3-402.

64 (7) (a) "School employee" means an employee of a public school district, charter
 65 school, or private school whose duties, responsibilities, or assignments require the employee to
 66 be physically present on a school's campus at least half of the days on which school is held
 67 during a school year.

68 (b) "School employee" includes a substitute teacher, as defined in Section 53E-6-901.

69 (8) "School year" means the period of time designated by a local school board, charter
 70 school governing board, or private school as the school year for high school, middle school, or
 71 elementary school students.

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

73 **53E-6-901. Substitute teachers.**

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

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

80 ~~[(2)] (3) [A person must]~~ An individual shall submit to a background check [under] in
 81 accordance with Section 53G-11-402 prior to employment as a substitute teacher.

82 ~~[(3)] (4)~~ A teacher's position in the classroom may not be filled by [an unlicensed] a
 83 non-licensed substitute teacher for more than a total of 20 days during any school year unless a
 84 licensed [personnel are] educator is not available.

85 ~~[(4)] (5) [A person]~~ An individual who is ineligible to hold a license [for any reason
 86 other than professional preparation] for reasons described in Title 53E, Chapter 6, Part 6,
 87 License Denial and Discipline, may not serve as a substitute teacher.

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

89 **53G-5-408. Criminal background checks on school personnel.**

90 The following individuals are required to submit to a criminal background check and
91 ongoing monitoring as provided in [Section] Sections [53G-11-402](#) and [53G-11-403](#):

92 (1) an employee of a charter school who does not hold a current Utah educator license
93 issued by the state board under Title 53E, Chapter 6, Education Professional Licensure;

94 (2) a volunteer for a charter school who is given significant unsupervised access to a
95 student in connection with the volunteer's assignment;

96 (3) a contract employee, as defined in Section [53G-11-401](#), who works at a charter
97 school; and

98 (4) a charter school governing board member.

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

100 **53G-11-401. Definitions.**

101 As used in this part:

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

104 (2) "Bureau" means the Bureau of Criminal Identification within the Department of
105 Public Safety created in Section [53-10-201](#).

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

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

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

111 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,
112 suspended, or revoked license.

113 (6) "Non-licensed employee" means an employee of an LEA or qualifying private
114 school that does not hold a current Utah educator license issued by the state board under Title
115 53E, Chapter 6, Education Professional Licensure.

116 (7) "Personal identifying information" means:

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

118 (b) date of birth;

- 119 (c) address;
- 120 (d) telephone number;
- 121 (e) driver license number or other government-issued identification number;
- 122 (f) social security number; and
- 123 (g) fingerprints.
- 124 (8) "Qualifying private school" means a private school that:
 - 125 (a) enrolls students under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship
 - 126 Program; and
 - 127 (b) is authorized to conduct fingerprint-based background checks of national crime
 - 128 information databases under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L.
 - 129 No. 109-248.
 - 130 (9) "Rap back system" means a system that enables authorized entities to receive
 - 131 ongoing status notifications of any criminal history reported on individuals whose fingerprints
 - 132 are registered in the system.
 - 133 (10) "Substitute teacher" means the same as that term is defined in Section [53E-6-901](#).
 - 134 ~~[(10)]~~ (11) "WIN Database" means the Western Identification Network Database that
 - 135 consists of eight western states sharing one electronic fingerprint database.
 - 136 Section 5. Section **53G-11-402** is amended to read:
 - 137 **53G-11-402. Background checks for non-licensed employees, contract employees,**
 - 138 **volunteers, and charter school governing board members.**
 - 139 (1) An LEA or qualifying private school shall:
 - 140 (a) require the following individuals who are 18 years old or older to submit to a
 - 141 nationwide criminal background check and ongoing monitoring as a condition of employment
 - 142 or appointment:
 - 143 (i) a non-licensed employee;
 - 144 (ii) a contract employee;
 - 145 (iii) except for an officer or employee of a cooperating employer under an internship
 - 146 safety agreement under Section [53G-7-904](#), a volunteer who will be given significant
 - 147 unsupervised access to a student in connection with the volunteer's assignment; and
 - 148 (iv) a charter school governing board member;
 - 149 (b) collect the following from an individual required to submit to a background check

150 under Subsection (1)(a):

151 (i) personal identifying information;

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

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

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

156 (B) retention of personal identifying information for ongoing monitoring through
157 registration with the systems described in Section 53G-11-404;

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

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

160 (ii) ongoing monitoring through registration with the systems described in Section
161 53G-11-404 if the results of the initial background check do not contain disqualifying criminal
162 history information as determined by the LEA or qualifying private school in accordance with
163 Section 53G-11-405; and

164 (d) ~~[identify the appropriate privacy risk mitigation strategy to be used to ensure the~~
165 ~~LEA or qualifying private school only receives]~~ only receive notifications for individuals with
166 whom the LEA or qualifying private school maintains an authorizing relationship under this
167 section.

168 (2) An LEA or qualifying private school may not require an individual to pay the fee
169 described in Subsection (1)(b)(ii) unless the individual:

170 (a) has passed an initial review; and

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

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

175 (3) An LEA may not require the following individuals to pay the fee described in
176 Subsection (1)(b)(ii):

177 (a) a substitute teacher; or

178 (b) a volunteer described in Subsection (1)(a)(iii).

179 ~~[(4) An LEA or qualifying private school may establish a policy to exempt an~~
180 ~~individual described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under~~

181 Subsection (1) if the individual is being temporarily employed or appointed.]

182 (4) An LEA or qualifying private school shall enter into an agreement with another
 183 LEA or qualifying private school to clone the subscription or data from the FBI Rap Back
 184 System, as those terms are defined in Section 53-10-108, for employees or volunteers who are
 185 relocating, providing temporary volunteer services, or under contract in accordance with
 186 Section 53-10-108.

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

188 **53G-11-403. Background checks for licensed educators.**

189 (1) The state board shall:

190 [(1)] (a) require a license applicant to submit to a nationwide criminal background
 191 check and ongoing monitoring as a condition for licensing;

192 [(2)] (b) collect the following from an applicant:

193 [(a)] (i) personal identifying information; and

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

195 [(c)] (ii) consent, on a form specified by the state board, for:

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

198 [(ii)] (B) retention of personal identifying information for ongoing monitoring through
 199 registration with the systems described in Section 53G-11-404; and

200 [(iii)] (C) disclosure of any criminal history information to the individual's employing
 201 LEA or qualifying private school;

202 [(3)] (c) submit an applicant's personal identifying information to the bureau for:

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

204 [(b)] (ii) ongoing monitoring through registration with the systems described in Section
 205 53G-11-404 if the results of the initial background check do not contain disqualifying criminal
 206 history information as determined by the state board in accordance with Section 53G-11-405;

207 [(4)] (d) [~~identify the appropriate privacy risk mitigation strategy that will be used to~~
 208 ~~ensure that the state board only receives~~] only receive notifications for individuals with whom
 209 the state board maintains an authorizing relationship under this section;

210 [(5)] (e) notify the employing LEA or qualifying private school upon receipt of any
 211 criminal history information reported on a licensed educator employed by the LEA or

212 qualifying private school; and

213 ~~[(6)]~~ (f) ~~[(a)]~~ (i) collect the information described in Subsection (2) from individuals
214 who were licensed prior to July 1, 2015, by the individual's next license renewal date; and
215 ~~[(b)]~~ (ii) submit the information to the bureau for ongoing monitoring through
216 registration with the systems described in Section [53G-11-404](#).

217 (2) An LEA or qualifying private school that receives criminal history information
218 about a licensed educator under Subsection [53G-11-403\(5\)](#) shall assess the employment status
219 of the licensed educator as provided in Section [53G-11-405](#).

220 (3) An LEA or qualifying private school shall enter into an agreement with another
221 LEA or qualifying private school to clone the subscription or data from the FBI Rap Back
222 System, as those terms are defined in Section [53-10-108](#), for employees or volunteers who are
223 relocating, providing temporary volunteer services, or under contract in accordance with
224 Section [53-10-108](#).

225 Section 7. Section **53G-11-404** is amended to read:

226 **53G-11-404. Bureau responsibilities.**

227 The bureau shall:

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

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

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

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

234 (a) an alleged offense; or

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

236 (3) assist authorized entities to ~~[identify the appropriate privacy risk mitigation strategy~~
237 ~~that is to be used to]~~ ensure that the authorized entity only receives notifications for individuals

238 with whom the authorized entity maintains an authorizing relationship under this section; and

239 (4) collaborate with the state board to provide training to authorized entities ~~[on the~~
240 ~~notification procedures and privacy risk mitigation strategies described in this part]~~ on
241 notification and privacy strategies consistent with this part.

242 Section 8. Section **63I-1-276** is amended to read:

243 **63I-1-276. Repeal dates: Title 76.**

244 [~~Section 76-10-526.1~~, relating to an information check before the private sale of a
245 firearm, is repealed July 1, 2025].

246 Section 9. Section **76-10-526.1** is amended to read:

247 **76-10-526.1. Information check on concealed carry permits -- Uses.**

248 (1) As used in this section:

249 (a) "Governmental entity" means the state and the state's political subdivisions.

250 (b) "Law enforcement agency" means the same as that term is defined in Section

251 [53-1-102](#).

252 (c) "Local education agency" means the same as that term is defined in Section

253 [53E-1-102](#).

254 [~~(c)~~] (d) "Personally identifiable information" means the same as that term is defined in

255 Section [63D-2-102](#).

256 (2) Subject to Subsections [~~(3) and (4)~~] (4) and (5), the bureau shall create an online
257 process that allows an individual who is selling or purchasing a firearm to voluntarily
258 determine:

259 (a) if the other individual involved in the sale of the firearm has a valid concealed carry
260 permit; or

261 (b) based on the serial number of the firearm, if the firearm is reported as stolen.

262 (3) (a) The bureau shall expand the online process to allow a local education agency
263 that is authorized to conduct a background check on a prospective employee or existing
264 employee to determine if the prospective employee or existing employee has a valid concealed
265 carry permit.

266 (b) A concealed carry permit verification under this section satisfies the background
267 check requirement for non-licensed or licensed employees under Section [53G-11-402](#) or
268 [53G-11-403](#).

269 [~~(3)~~] (4) Subsection (2) does not apply to a federal firearms licensee or dealer.

270 [~~(4)~~] (5) The bureau may not:

271 (a) provide information related to a request under Subsection (2) to a law enforcement
272 agency; or

273 (b) collect a user's personally identifiable information under Subsection (2).

274 [~~(5)~~] (6) A governmental entity may not require an individual who is selling or
275 purchasing a firearm to use the process under Subsection (2).

276 [~~(6)~~] (7) If an individual uses the process under Subsection (2), the individual is not
277 required, based on the information the individual receives from the bureau, to make a report to
278 a law enforcement agency.

279 [~~(7)~~] (8) After responding to a request under Subsection (2), the bureau shall
280 immediately dispose of all information related to the request.

281 [~~(8)~~] (9) (a) This section does not create a civil cause of action arising from the sale or
282 purchase of a firearm under this section.

283 (b) An individual's failure to use the process under Subsection (2) is not evidence of
284 the individual's negligence in a civil cause of action.

285 Section 10. **Effective date.**

286 This bill takes effect on May 1, 2024.