

# HB0121S01 compared with HB0121

~~text~~ shows text that was in HB0121 but was deleted in HB0121S01.

inserted text shows text that was not in HB0121 but was inserted into HB0121S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

## EDUCATOR BACKGROUND CHECK AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Trevor Lee**

Senate Sponsor: \_\_\_\_\_

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### 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~~
- ▶ 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;

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- ▶ 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

### 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-5-408**, as last amended by Laws of Utah 2019, Chapter 293

**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

**53G-11-404**, as last amended by Laws of Utah 2019, Chapter 293

**63I-1-276**, as last amended by Laws of Utah 2023, Chapter 398

**76-10-526.1**, as enacted by Laws of Utah 2023, Chapter 398

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

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

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

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

- (1) "Active duty service member" means a person on active military duty with the United States military and includes full time military active duty, military reserve active duty, and national guard military active duty service members stationed in Utah.
- (2) "Active duty service member spouse" means a person recognized by the military as the spouse of an active duty service member and who resides with the active duty service member in Utah.
- (3) "Board" means the Concealed Firearm Review Board created in Section 53-5-703.

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

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

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

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

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced ~~[pursuant to]~~ in accordance with Section 76-3-402.

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

(b) "School employee" ~~{also means}~~ includes a substitute teacher, as defined in Section 53E-6-901.

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

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

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

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

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

~~(2)~~ (3) ~~[A person must]~~ ~~{(3)}~~ An individual shall submit to a background check

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~~[under]~~ in accordance with Section 53G-11-402 prior to employment as a substitute teacher.

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

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

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

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

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

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

Section ~~[(3)]~~ 4. Section **53G-11-401** is amended to read:

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

As used in this part:

- (1) "Authorized entity" means an LEA, qualifying private school, or the state board that is authorized to request a background check and ongoing monitoring under this part.
- (2) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety created in Section 53-10-201.
- (3) "Contract employee" means an employee of a staffing service or other entity who works at a public or private school under a contract.
- (4) "FBI" means the Federal Bureau of Investigation.
- (5) (a) "License applicant" means an applicant for a license issued by the state board under Title 53E, Chapter 6, Education Professional Licensure.  
(b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,

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suspended, or revoked license.

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

(7) "Personal identifying information" means:

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

~~{~~ ~~(8) "Substitute teacher" means the same as that term is defined in Subsection [53E-6-901](#).~~

~~}~~ ~~{~~ ~~(9)~~ ~~8~~ "Qualifying private school" means a private school that:

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

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

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

~~(10) "Substitute teacher" means the same as that term is defined in Section [53E-6-901](#).~~

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

Section ~~{~~ ~~4~~ ~~5~~. Section **53G-11-402** is amended to read:

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

(1) An LEA or qualifying private school shall:

- (a) require the following individuals who are 18 years old or older to submit to a

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nationwide criminal background check and ongoing monitoring as a condition of employment or appointment:

- (i) a non-licensed employee;
- (ii) a contract employee;
- (iii) except for an officer or employee of a cooperating employer under an internship safety agreement under Section 53G-7-904, a volunteer who will be given significant

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

- (iv) a charter school governing board member;

(b) collect the following from an individual required to submit to a background check under Subsection (1)(a):

- (i) personal identifying information;
- (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(15); and
- (iii) consent, on a form specified by the LEA or qualifying private school, for:

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

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

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

- (i) an initial fingerprint-based background check by the FBI and the bureau; and
- (ii) ongoing monitoring through registration with the systems described in Section

53G-11-404 if the results of the initial background check do not contain disqualifying criminal history information as determined by the LEA or qualifying private school in accordance with Section 53G-11-405; and

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

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

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

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

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~~{ (b) An LEA may not require a non-licensed substitute teacher to pay the fee described in Subsection (1)(b)(ii):~~

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

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

(a) a substitute teacher; or

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

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

~~— Section 5 }~~

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

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

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

(1) The state board shall:

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

~~{ (2) }~~ (b) collect the following from an applicant:

~~{ (a) }~~ (i) personal identifying information; and

~~{ (b) }~~ (b) a fee described in Subsection 53-10-108(15); and

~~{ (c) }~~ (ii) consent, on a form specified by the state board, for:

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

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

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

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

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

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

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

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

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

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

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

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

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

**53G-11-404. 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



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

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

### 63I-1-276. Repeal dates: Title 76.

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

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

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

- (1) As used in this section:
  - (a) "Governmental entity" means the state and the state's political subdivisions.
  - (b) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.
  - (c) "Local education agency" means the same as that term is defined in Section 53E-1-102.
  - [~~(c)~~] (d) "Personally identifiable information" means the same as that term is defined in Section 63D-2-102.
- (2) Subject to Subsections [~~(3) and (4)~~] (4) and (5), the bureau shall create an online process that allows an individual who is selling or purchasing a firearm to voluntarily determine:
  - (a) if the other individual involved in the sale of the firearm has a valid concealed carry permit; or
  - (b) based on the serial number of the firearm, if the firearm is reported as stolen.

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

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

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

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

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

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

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

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

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

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

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

Section ~~6~~10. **Effective date.**

This bill takes effect on May 1, 2024.