

Representative Karianne Lisonbee proposes the following substitute bill:

EDUCATOR BACKGROUND CHECK AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Trevor Lee

Senate Sponsor: Lincoln Fillmore

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;
- ▶ prohibits a local education agency (LEA) from collecting background check fees from licensed employees and non-licensed substitute teachers;
- ▶ allows entities to clone background information between LEAs or qualifying private school; 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



26 **53E-6-901**, as renumbered and amended by Laws of Utah 2018, Chapter 1
 27 **53G-5-408**, as last amended by Laws of Utah 2019, Chapter 293
 28 **53G-11-401**, as last amended by Laws of Utah 2019, Chapter 293
 29 **53G-11-402**, as last amended by Laws of Utah 2023, Chapter 527
 30 **53G-11-403**, as last amended by Laws of Utah 2019, Chapter 293



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

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

33 **53-5-702. Definitions.**

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

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

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

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

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

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

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

- 47 (a) a finding of guilt based on evidence presented to a judge or jury;
- 48 (b) a guilty plea;
- 49 (c) a plea of nolo contendere;
- 50 (d) a plea of guilty or nolo contendere which is held in abeyance pending the successful
51 completion of probation;
- 52 (e) a pending diversion agreement; or
- 53 (f) a conviction which has been reduced ~~[pursuant to]~~ in accordance with Section
54 **76-3-402**.

55 (7) (a) "School employee" means an employee of a public school district, charter
56

57 school, or private school whose duties, responsibilities, or assignments require the employee to
58 be physically present on a school's campus at least half of the days on which school is held
59 during a school year.

60 (b) "School employee" also means a substitute teacher, as defined in Section
61 53E-6-901.

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

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

66 **53E-6-901. Substitute teachers.**

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

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

73 [(2)] (3) [A person must] An individual shall submit to a background check [under] in
74 accordance with Section 53G-11-402 prior to employment as a substitute teacher.

75 [(3)] (4) A teacher's position in the classroom may not be filled by [an unlicensed] a
76 non-licensed substitute teacher for more than a total of 20 days during any school year unless a
77 licensed [personnel are] educator is not available.

78 [(4)] (5) [A person] An individual who is ineligible to hold a license [for any reason
79 other than professional preparation] for reasons described in Title 53E, Chapter 6, Part 6,
80 License Denial and Discipline, may not serve as a substitute teacher.

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

82 **53G-5-408. Criminal background checks on school personnel.**

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

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

87 (2) a volunteer for a charter school who is given significant unsupervised access to a

88 student in connection with the volunteer's assignment;

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

91 (4) a charter school governing board member.

92 Section 4. Section [53G-11-401](#) is amended to read:

93 **53G-11-401. Definitions.**

94 As used in this part:

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

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

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

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

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

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

106 (6) "Non-licensed employee" means an employee of an LEA or qualifying private
107 school that does not hold a current Utah educator license issued by the state board under Title
108 53E, Chapter 6, Education Professional Licensure.

109 (7) "Personal identifying information" means:

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

111 (b) date of birth;

112 (c) address;

113 (d) telephone number;

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

115 (f) social security number; and

116 (g) fingerprints.

117 (8) "Substitute teacher" means the same as that term is defined in Subsection
118 [53E-6-901](#).

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

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

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

125 [~~(9)~~] (10) "Rap back system" means a system that enables authorized entities to receive
126 ongoing status notifications of any criminal history reported on individuals whose fingerprints
127 are registered in the system.

128 [~~(10)~~] (11) "WIN Database" means the Western Identification Network Database that
129 consists of eight western states sharing one electronic fingerprint database.

130 Section 5. Section **53G-11-402** is amended to read:

131 **53G-11-402. Background checks for non-licensed employees, contract employees,**
132 **volunteers, and charter school governing board members.**

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

134 (a) require the following individuals who are 18 years old or older to submit to a
135 nationwide criminal background check and ongoing monitoring as a condition of employment
136 or appointment:

137 (i) a non-licensed employee;

138 (ii) a contract employee;

139 (iii) except for an officer or employee of a cooperating employer under an internship
140 safety agreement under Section **53G-7-904**, a volunteer who will be given significant
141 unsupervised access to a student in connection with the volunteer's assignment; and

142 (iv) a charter school governing board member;

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

145 (i) personal identifying information;

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

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

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

150 (B) retention of personal identifying information for ongoing monitoring through
151 registration with the systems described in Section 53G-11-404;
152 (c) submit the individual's personal identifying information to the bureau for:
153 (i) an initial fingerprint-based background check by the FBI and the bureau; and
154 (ii) ongoing monitoring through registration with the systems described in Section
155 53G-11-404 if the results of the initial background check do not contain disqualifying criminal
156 history information as determined by the LEA or qualifying private school in accordance with
157 Section 53G-11-405; and

158 (d) identify the appropriate privacy risk mitigation strategy to be used to ensure the
159 LEA or qualifying private school only receives notifications for individuals with whom the
160 LEA or qualifying private school maintains an authorizing relationship.

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

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

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

165 (b) An LEA may not require a non-licensed substitute teacher to pay the fee described
166 in Subsection (1)(b)(ii).

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

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

173 (5) An LEA or qualifying private school shall provide another LEA or qualifying
174 private school that requires the same or less than a national background check, as described in
175 Subsection 53G-11-402(1)(a), an opportunity to clone the subscription or data from the FBI
176 Rap Back System, as those terms are defined in Section 53-10-108, for employees or
177 volunteers who are relocating, providing temporary volunteer services, or under contract, and
178 in accordance with186 Section 53-10-108.

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

180 **53G-11-403. Background checks for licensed educators.**

181 The state board shall:

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

184 (2) collect the following from an applicant:

185 (a) personal identifying information; and

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

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

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

189 submission of the application;

190 (ii) retention of personal identifying information for ongoing monitoring through

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

192 (iii) disclosure of any criminal history information to the individual's employing LEA

193 or qualifying private school;

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

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

196 (b) ongoing monitoring through registration with the systems described in Section
197 53G-11-404 if the results of the initial background check do not contain disqualifying criminal
198 history information as determined by the state board in accordance with Section 53G-11-405;

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

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

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

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

209 (7) An LEA or qualifying private school shall provide another LEA or qualifying
210 private school that requires the same or less than a national background check, as described in
211 Subsection 53G-11-402(1)(a), an opportunity to clone the subscription or data from the FBI

212 Rap Back System, as those terms are defined in Section [53-10-108](#), for employees or
213 volunteers who are relocating, providing temporary volunteer services, or under contract, and
214 in accordance with 186 Section [53-10-108](#).

215 Section 7. **Effective date.**

216 This bill takes effect on May 1, 2024.