

HB0121S02 compared with HB0121

~~deleted text~~ shows text that was in HB0121 but was deleted in HB0121S02.

inserted text shows text that was not in HB0121 but was inserted into HB0121S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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; ~~and~~
- ▶ prohibits a ~~Local Education Agency~~ 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.

HB0121S02 compared with HB0121

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

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.

(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;

HB0121S02 compared with HB0121

(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 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 [~~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.

HB0121S02 compared with HB0121

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, 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;

HB0121S02 compared with HB0121

- (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) "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)]~~ (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 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;

HB0121S02 compared with HB0121

(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 notifications for individuals with whom the LEA or qualifying private school maintains an authorizing relationship.

(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.

(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.

(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.

(5) An LEA or qualifying private school shall provide another LEA or qualifying

HB0121S02 compared with HB0121

private school that requires the same or less than a national background check, as described in Subsection 53G-11-402(1)(a), an opportunity 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, and in accordance with 186 Section 53-10-108.

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

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

The state board shall:

- (1) require a license applicant to submit to a nationwide criminal background check and ongoing monitoring as a condition for licensing;
- (2) collect the following from an applicant:
 - (a) personal identifying information; and
~~[(b) a fee described in Subsection 53-10-108(15); and]~~
 - ~~[(c)]~~ (b) consent, on a form specified by the state board, for:
 - (i) an initial fingerprint-based background check by the FBI and bureau upon submission of the application;
 - (ii) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 53G-11-404; and
 - (iii) disclosure of any criminal history information to the individual's employing LEA or qualifying private school;
- (3) submit an applicant's personal identifying information to the bureau for:
 - (a) an initial fingerprint-based background check by the FBI and bureau; and
 - (b) 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) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the state board only receives notifications for individuals with whom the state board maintains an authorizing relationship;
- (5) 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

HB0121S02 compared with HB0121

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

(7) An LEA or qualifying private school shall provide another LEA or qualifying private school that requires the same or less than a national background check, as described in Subsection 53G-11-402(1)(a), an opportunity 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, and in accordance with 186 Section 53-10-108.

Section ~~6~~7. **Effective date.**

This bill takes effect on May 1, 2024.