

1 **SCHOOL EMPLOYEE CRIMINAL BACKGROUND**
2 **CHECK**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheryl L. Allen**

6 Senate Sponsor: Margaret Dayton

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions regarding criminal background checks for employees of,
11 or volunteers at, school districts, charter schools, and private schools.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ allows a school district or charter school to require an employee to periodically
15 submit to a criminal background check in accordance with rules of the State Board
16 of Education or policies of the local school board or charter school governing board;

17 ▶ provides that a school district, charter school, or private school may require an
18 applicant or employee to pay for the costs of a criminal background check; ~~and~~ **[and]**

18a ▶ allows the State Board of Education to require an educator to submit to a criminal
18b background check where reasonable cause exists; and ~~and~~

19 ▶ makes technical amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53A-3-410**, as last amended by Laws of Utah 2005, Chapter 35

27 **53A-6-401**, as last amended by Laws of Utah 2000, Chapter 24



28 REPEALS AND REENACTS:

29 **53A-1a-512.5**, as enacted by Laws of Utah 2003, Chapter 199



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

32 Section 1. Section **53A-1a-512.5** is repealed and reenacted to read:

33 **53A-1a-512.5. Criminal background checks on school personnel.**

34 An employee of a charter school or a volunteer for a charter school who is given
35 significant unsupervised access to a student in connection with the volunteer's assignment is
36 required to submit to a criminal background check as provided in Section 53A-3-410.

37 Section 2. Section **53A-3-410** is amended to read:

38 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**
39 **of costs -- Request for review.**

40 (1) As used in this section:

41 (a) "Administrator" means an administrator at a school district, charter school, or
42 private school that requests the Criminal Investigations and Technical Services Division of the
43 Department of Public Safety to conduct a criminal background check on an applicant or
44 employee.

45 (b) "Applicant" means a person under consideration for:

46 (i) an offer of employment at a school district, charter school, or private school; or
47 (ii) appointment as a volunteer for a school district, charter school, or private school
48 who will be given significant unsupervised access to a student in connection with the
49 volunteer's assignment.

50 ~~[(†)]~~ (2) A school district superintendent [or], the superintendent's designee, or the
51 chief administrative officer of a charter school:

52 (a) shall require ~~[a potential employee or a volunteer who will be given significant~~
53 ~~unsupervised access to a student in connection with the volunteer's assignment]~~ an applicant to
54 submit to a criminal background check as a condition for employment or appointment; [and]

55 (b) ~~†~~→ [may] shall ←~~†~~ require an employee to periodically submit to a criminal
55a background check in

56 accordance with rules of the State Board of Education or policies of the local school board or
57 charter school governing board; and

58 ~~[(b)]~~ (c) where reasonable cause exists, may require an existing employee or volunteer

59 to submit to a criminal background check.

60 ~~[(2)]~~ (3) The chief administrative officer of a private school may require, and the chief
61 administrative officer of ~~[the]~~ a private school that enrolls scholarship students under Chapter
62 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

63 (a) ~~[a potential employee or volunteer]~~ an applicant to submit to a criminal background
64 check as a condition for employment or appointment; and

65 (b) where reasonable cause exists, an existing employee or volunteer to submit to a
66 criminal background check.

67 ~~[(3) The]~~ (4) An applicant, volunteer, or employee shall receive written notice that
68 ~~[the]~~ a criminal background check has been requested.

69 ~~[(4)]~~ (5) (a) (i) Fingerprints of the ~~[individual]~~ applicant, volunteer, or employee shall
70 be taken, and the Criminal Investigations and Technical Services Division of the Department of
71 Public Safety, established in Section 53-10-103, shall release the ~~[individual's]~~ applicant's,
72 volunteer's, or employee's full criminal history record ~~[of criminal convictions]~~ to the
73 administrator requesting the information.

74 (ii) The division shall maintain a separate file of fingerprints submitted under
75 Subsection ~~[(4)]~~ (5)(a)(i) and notify the ~~[State Office of Education]~~ administrator when a new
76 entry is made against ~~[a person]~~ an employee or volunteer whose fingerprints are held in the
77 file regarding:

78 (A) any matters involving an alleged sexual offense;

79 (B) any matters involving an alleged ~~[felony or class A misdemeanor drug]~~
80 drug-related offense; ~~[or]~~

81 (C) any matters involving an alleged alcohol-related offense; or

82 ~~[(C)]~~ (D) any matters involving an alleged offense against the person under Title 76,
83 Chapter 5, Offenses Against the Person.

84 (iii) The cost of maintaining the separate file shall be paid by the ~~[State Office of~~
85 Education] school district, charter school, or private school from fees charged to those
86 submitting fingerprints.

87 (b) Information received by the division from entities other than agencies or political
88 subdivisions of the state may not be released to a private school unless the release is
89 permissible under applicable laws or regulations of the entity providing the information.

90 ~~[(5)]~~ (6) The superintendent, local school board, or their counterparts at a charter
91 school or private school shall consider only those convictions, pleas in abeyance, or arrests
92 which are job-related for the employee, applicant, or volunteer.

93 ~~[(6) (a) The district or private school shall pay the cost of the background check except~~
94 ~~as otherwise provided in Subsection (6)(b), and the monies collected shall be credited to the~~
95 ~~Criminal Investigations and Technical Services Division to offset its expenses.]~~

96 ~~[(b) The]~~ (7) (a) A school district, charter school, or private school may require an
97 applicant to pay the costs of a background check as a condition for consideration for
98 employment or appointment, if~~[(i)]~~ the applicant:

99 ~~[(A)]~~ (i) has passed an initial review; and

100 ~~[(B)]~~ (ii) is one of a pool of no more than five candidates for a position~~[(; and)]~~.

101 ~~[(C) except as may be otherwise provided by state board rule for an applicant who~~
102 ~~submitted to a background check while completing a higher education program at a Utah~~
103 ~~institution of higher education, has not been the subject of a criminal background check of~~
104 ~~similar scope during the preceding two years that was requested by a potential employer or the~~
105 ~~State Board of Education; and]~~

106 ~~[(ii) a copy of the background check is provided to the district or school considering~~
107 ~~employment or appointment of the applicant.]~~

108 (b) A school district or charter school may require an employee to pay the cost of a
109 periodic criminal background check required pursuant to rules of the State Board of Education
110 or policies of the local school board or charter school governing board.

111 ~~[(7)]~~ (8) The Criminal Investigations and Technical Services Division shall, upon
112 request, seek additional information from regional or national criminal data files in responding
113 to inquiries under this section.

114 ~~[(8) (a) A private school seeking information from the Federal Bureau of Investigation~~
115 ~~or other national criminal data file which the private school may not access directly shall~~
116 ~~submit its request to the Teacher Certification Section of the State Board of Education, together~~
117 ~~with the required fee and the school's criminal data-related criteria for limiting or rejecting~~
118 ~~employment.]~~

119 ~~[(b) The section shall submit the request and, upon receiving the requested~~
120 ~~information, shall determine whether the subject of the inquiry is entitled to employment under~~

121 the school's criteria.]

122 [~~(c) The section shall disclose its determination to the school but may not disclose the~~
123 ~~data in the national criminal data file.]~~

124 (9) (a) [~~The~~] An applicant, volunteer, or employee shall have an opportunity to respond
125 to any information received as a result of [~~the~~] a criminal background check.

126 [~~(b) A private school applicant, volunteer, or employee who wishes to respond shall:]~~

127 [~~(i) submit a request to the school; and]~~

128 [~~(ii) give a written statement to the Teacher Certification Office authorizing the office~~
129 ~~to release the background check information to a hearing officer selected by the individual and~~
130 ~~the school.]~~

131 [~~(c) The individual and the school shall equally share any costs incurred under~~
132 ~~Subsection (9) (b).]~~

133 [~~(d)~~] (b) A public agency shall resolve any request for review by an applicant,
134 volunteer, or employee [~~seeking employment or employed by the agency]~~ through [~~normal~~]
135 administrative procedures established by the agency.

136 (10) (a) If a person is denied employment or is dismissed from employment because of
137 information obtained through a criminal background check, the person shall receive written
138 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons
139 [~~under the procedures set forth in Subsection (9)].~~

140 (b) A school district or charter school shall resolve any request for a review of a denial
141 of or dismissal from employment through administrative procedures established by the school
142 district or charter school.

143 (11) Information obtained under this part is confidential and may only be disclosed as
144 provided in this section.

145 Section 3. Section **53A-6-401** is amended to read:

146 **53A-6-401. Background checks.**

147 (1) (a) A license applicant shall submit to a background check as a condition for
148 licensing.

149 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or
150 revoked license.

150a **H→ (2) Where reasonable cause exists, the State Board of Education may require an**
150b **educator to submit to a criminal background check.**

151 [~~(2)~~] (3) **←H** (a) The office shall establish a procedure for obtaining and evaluating relevant

152 information concerning license applicants, including fingerprinting the applicant and
 153 submitting the prints to the Criminal Investigations and Technical Services Division of the
 154 Department of Public Safety for checking against applicable state, regional, and national
 155 criminal records files.

156 (b) The Criminal Investigations and Technical Services Division shall release to the
 157 office all information received in response to the office's request.

158 (c) The Criminal Investigations and Technical Services Division shall maintain a
 159 separate file of fingerprints submitted under Subsection ~~H→ [(2)]~~ (3) ~~←H~~ (a) and notify the office
 159a when a new
 160 entry is made against a person whose fingerprints are held in the file regarding any matters
 161 involving an alleged:

162 (i) sexual offense;

163 (ii) ~~[felony or class A misdemeanor drug]~~ drug-related offense; ~~[or]~~

164 (iii) alcohol-related offense; or

165 ~~[(iii)]~~ (iv) offense against the person under Title 76, Chapter 5, Offenses Against the
 166 Person.

167 (d) The cost of maintaining the separate file shall be paid by the office from fees
 168 charged to those submitting fingerprints.

169 ~~H→ [(3)]~~ (4) ~~←H~~ An applicant ~~H→~~ or educator ~~←H~~ shall have ~~H→~~ an ~~←H~~ opportunity
 169a to respond to any information received by the
 170 office as a result of the background check.

171 ~~H→ [(4)]~~ (5) ~~←H~~ In preparing recommendations concerning licensing for submission to the
 171a board,

172 the office shall consider only the following matters obtained through fingerprint checks to the
 173 extent that they are relevant to the license sought by the applicant ~~H→~~ or held by the

173a educator ~~←H~~ :

174 (a) convictions, including pleas in abeyance;

175 (b) any matters involving an alleged sexual offense;

176 (c) any matters involving an alleged felony or class A misdemeanor drug offense;

177 (d) any matters involving an alleged offense against the person under Title 76, Chapter
 178 5;

179 (e) any matters involving a felony;

180 (f) any matters involving a class A misdemeanor property offense alleged to have
 181 occurred within the previous three years; and

182 (g) any matters involving any other type of criminal offense, if more than one

183 occurrence of the same type of offense is alleged to have taken place within the previous eight
184 years.

185 ~~H→ [(5)] (6) ←H~~ If a recommendation is made for denial ~~H→~~ , suspension, or
185a revocation ~~←H~~ of licensure because of information

186 obtained through a background check, the person shall receive written notice of the reasons for
187 the recommendation and have an opportunity to respond in accordance with procedures set
188 forth under board rules.

189 ~~H→ [(6)] (7) ←H~~ Information obtained under this section is confidential and may only be
189a disclosed as
190 provided in this part.

191 ~~H→ [(7)] (8) ←H~~ The applicant shall pay the costs of conducting the background check
191a ~~H→~~ required pursuant to Subsection (1) ~~←H~~ .

192 ~~H→ [(8)] (9) ←H~~ This section applies to matters occurring both before and after the
192a effective date of
193 this section.

Legislative Review Note
as of 12-17-09 10:41 AM

Office of Legislative Research and General Counsel

H.B. 81 - School Employee Criminal Background Check

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

The burden of costs for background checks may shift from local governments to individuals.
