

HIGHER EDUCATION CRIMINAL BACKGROUND

AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val K. Potter

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides authorization to the Utah System of Technical Colleges Board of Trustees to require criminal background checks for certain employees and students.

Highlighted Provisions:

This bill:

- ▶ provides authorization to the Utah System of Technical Colleges Board of Trustees

H→ and individual technical colleges ←H

to require background checks for:

- prospective employees and volunteers of institutions;
- existing employees; or
- students under consideration for training programs requiring clinical internships

or externships; and

- ▶ provides authorization to the State Board of Regents to allow criminal background checks for student applicants:

- involved in training programs that include internships or externships that require a background check;
- dealing in direct patient care or with controlled substances; or
- under consideration for employment where licensure requires a background check before a person can work in the respective profession.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53B-1-110**, as enacted by Laws of Utah 2007, Chapter 248

34 ENACTS:

35 **53B-2a-104.1**, Utah Code Annotated 1953



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

38 Section 1. Section **53B-1-110** is amended to read:

39 **53B-1-110. Criminal background checks of prospective and existing employees of**
40 **higher education institutions -- Board to adopt policy.**

41 (1) As used in this section:

42 (a) "Institution" means an institution listed in Section **53B-1-102**.

43 (b) "Minor" means a person younger than 21 years of age.

44 (2) The board shall adopt a policy providing for criminal background checks of:

45 (a) prospective employees of institutions; ~~and~~

46 (b) existing employees of institutions, where reasonable cause exists~~[-]; and~~

47 (c) student applicants for training programs requiring clinical internships or externships
48 where the students will be involved in direct patient care or with controlled substances.

49 (3) (a) The policy shall require that:

50 (i) an applicant for any position that involves significant contact with minors or any
51 position considered to be security sensitive by the board or its designee shall submit to a
52 criminal background check as a condition of employment; and

53 (ii) an existing employee submit to a criminal background check, where reasonable
54 cause exists.

55 (b) Subsection (3)(a)(i) does not apply to adjunct faculty positions.

56 (c) The policy may allow or require applicants for positions other than those described
57 in Subsection (3)(a)(i) to submit to a criminal background check as a condition of employment.

58 (d) The policy may allow criminal background checks for new employees to be phased

59 in over a two-year period.

60 (e) The policy may allow criminal background checks for student applicants under
61 consideration for:

62 (i) training programs requiring clinical internships or externships where the clinical site
63 requires a background check;

64 (ii) training programs where students are involved in direct patient care or with
65 controlled substances; or

66 (iii) employment where licensure requires a background check before an individual can
67 work in the profession.

68 (4) The applicant or employee shall receive written notice that the background check
69 has been requested.

70 (5) Each applicant or employee subject to a criminal background check under this
71 section shall, if required by the institution:

72 [~~(a) be fingerprinted; and~~]

73 [~~(b) consent to a fingerprint background check by:~~]

74 [~~(i) the Utah Bureau of Criminal Identification; and~~]

75 [~~(ii) the Federal Bureau of Investigation.]~~]

76 (a) provide a completed fingerprint card to the department upon request; and

77 (b) provide a signed waiver on a form provided by the institution that meets the
78 requirements of Subsection [53-10-108\(4\)](#).

79 (6) (a) Institutions may request the Utah Bureau of Criminal Identification to conduct
80 criminal background checks of prospective employees and, where reasonable cause exists,
81 existing employees pursuant to board policy.

82 (b) At the request of an institution, the Utah Bureau of Criminal Identification shall:

83 (i) release the individual's full record of criminal convictions to the administrator
84 requesting the information; and

85 (ii) seek additional information from regional or national criminal data files in
86 responding to inquiries under this section.

87 (c) Information received by the Utah Bureau of Criminal Identification from entities
88 other than agencies or political subdivisions of the state may not be released to a private entity
89 unless the release is permissible under applicable laws or regulations of the entity providing the

90 information.

91 (d) Except as provided in Subsection (7), the institution shall pay the cost of
92 background checks conducted by the Utah Bureau of Criminal Identification, and the money
93 collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses.

94 (7) The board may by policy require an applicant to pay the costs of a criminal
95 background check as a condition of employment.

96 (8) The applicant or employee shall have an opportunity to respond to any information
97 received as a result of the criminal background check.

98 (9) If a person is denied employment or is dismissed from employment because of
99 information obtained through a criminal background check, the person shall receive written
100 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons
101 under procedures established by the board in policy.

102 Section 2. Section **53B-2a-104.1** is enacted to read:

103 **53B-2a-104.1. Background checks for students and employees.**

104 (1) As used in this section, "bureau" means the Bureau of Criminal Identification
105 created in Section [53-10-201](#).

106 (2) Beginning July 1, 2018, the board of ~~H~~→ ~~[trustees]~~ **directors** ←~~H~~ of a technical
106a college ~~H~~→ ~~[shall]~~ **may** ←~~H~~ require the
107 following individuals to submit to a fingerprint-based local, regional, and national criminal
108 history background check and ongoing monitoring as a condition of employment:

109 (a) prospective employees ~~H~~→ ~~[and volunteers]~~ ←~~H~~ of technical colleges; and

110 (b) existing employees of institutions, on a pre-scheduled and rotating basis, or where
111 reasonable cause exists.

112 (3) Beginning July 1, 2018, the board of ~~H~~→ ~~[trustees shall]~~ **directors may** ←~~H~~ require
112a a fingerprint-based local,
113 regional, and national criminal history background check without ongoing monitoring as a
114 condition of enrollment for student applicants who are under consideration for training
115 programs:

116 (a) requiring clinical internships or externships; or

117 (b) involving direct patient care or controlled substances.

118 (4) Each individual in a position listed in Subsection (2) shall provide a completed
119 fingerprint card to the technical college upon request.

120 (5) The board of ~~H~~→ ~~[trustees]~~ **directors** ←~~H~~ shall require that an individual required
120a to submit to a

121 background check under Subsections (3) and (4) provide a signed waiver to the technical
122 college on a form provided by the board of ~~H~~→ [trustees] directors ←~~H~~ that meets the
122a requirements of Subsection
123 53-10-108(4).

124 (6) For a noncriminal justice background search and registration in accordance with
125 Subsection 53-10-108(13), the technical college shall submit to the bureau:

126 (a) the applicant's or employee's personal identifying information and fingerprints for a
127 criminal history search of applicable local, regional, and national databases; and

128 (b) a request for all information received as a result of the local, regional, and
129 nationwide background check.

130 (7) The program or department requesting the background check is responsible for the
131 payment of all fees required by Subsection 53-10-108(15) and any fees required to be
132 submitted to the Federal Bureau of Investigation by the bureau.

133 (8) The board of trustees shall make rules in accordance with Title 63G, Chapter 3,
134 Utah Administrative Rulemaking Act, that:

135 (a) identify the appropriate privacy risk mitigation strategy to be used in accordance
136 with Subsection 53-10-108(13)(b); and

137 (b) list specifically which training programs will require pre-acceptance background
138 checks.

Legislative Review Note
Office of Legislative Research and General Counsel