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**BACKGROUND CHECK MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keith Grover**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires background checks for certain individuals who have direct contact with children.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires an employee, independent contractor, or volunteer who has direct contact with a child to obtain a background check every 60 months, unless otherwise required by state or federal law;
- ▶ requires a person to obtain a background check for an individual before deciding whether to engage that individual in a position where the individual will have direct contact with children;
- ▶ classifies certain background check information as a protected record under the Government Records Access and Management Act;
- ▶ limits the sharing and use of certain background check information; and
- ▶ makes it a class C misdemeanor for a person who fails to obtain or maintain a background check for an employee, contractor, or volunteer who has direct contact with children.

**Money Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63G-2-302**, as last amended by Laws of Utah 2022, Chapters 169, 334

33 ENACTS:

34 **80-8-101**, Utah Code Annotated 1953

35 **80-8-102**, Utah Code Annotated 1953

36 **80-8-201**, Utah Code Annotated 1953

37 **80-8-202**, Utah Code Annotated 1953

38 **80-8-203**, Utah Code Annotated 1953

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

41 Section 1. Section **63G-2-302** is amended to read:

42 **63G-2-302. Private records.**

43 (1) The following records are private:

44 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
45 social services, welfare benefits, or the determination of benefit levels;

46 (b) records containing data on individuals describing medical history, diagnosis,  
47 condition, treatment, evaluation, or similar medical data;

48 (c) records of publicly funded libraries that when examined alone or with other records  
49 identify a patron;

50 (d) records received by or generated by or for:

51 (i) the Independent Legislative Ethics Commission, except for:

52 (A) the commission's summary data report that is required under legislative rule; and

53 (B) any other document that is classified as public under legislative rule; or

54 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,  
55 unless the record is classified as public under legislative rule;

56 (e) records received by, or generated by or for, the Independent Executive Branch

57 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review

58 of Executive Branch Ethics Complaints;

- 59 (f) records received or generated for a Senate confirmation committee concerning  
60 character, professional competence, or physical or mental health of an individual:
- 61 (i) if, prior to the meeting, the chair of the committee determines release of the records:  
62 (A) reasonably could be expected to interfere with the investigation undertaken by the  
63 committee; or  
64 (B) would create a danger of depriving a person of a right to a fair proceeding or  
65 impartial hearing; and  
66 (ii) after the meeting, if the meeting was closed to the public;
- 67 (g) employment records concerning a current or former employee of, or applicant for  
68 employment with, a governmental entity that would disclose that individual's home address,  
69 home telephone number, social security number, insurance coverage, marital status, or payroll  
70 deductions;
- 71 (h) records or parts of records under Section [63G-2-303](#) that a current or former  
72 employee identifies as private according to the requirements of that section;
- 73 (i) that part of a record indicating a person's social security number or federal employer  
74 identification number if provided under Section [31A-23a-104](#), [31A-25-202](#), [31A-26-202](#),  
75 [58-1-301](#), [58-55-302](#), [61-1-4](#), or [61-2f-203](#);
- 76 (j) that part of a voter registration record identifying a voter's:  
77 (i) driver license or identification card number;  
78 (ii) social security number, or last four digits of the social security number;  
79 (iii) email address;  
80 (iv) date of birth; or  
81 (v) phone number;
- 82 (k) a voter registration record that is classified as a private record by the lieutenant  
83 governor or a county clerk under Subsection [20A-2-101.1\(5\)\(a\)](#), [20A-2-104\(4\)\(h\)](#), or  
84 [20A-2-204\(4\)\(b\)](#);
- 85 (l) a voter registration record that is withheld under Subsection [20A-2-104\(7\)](#);
- 86 (m) a withholding request form described in Subsections [20A-2-104\(7\)](#) and (8) and any  
87 verification submitted in support of the form;
- 88 (n) a record that:  
89 (i) contains information about an individual;

- 90 (ii) is voluntarily provided by the individual; and
- 91 (iii) goes into an electronic database that:
  - 92 (A) is designated by and administered under the authority of the Chief Information
  - 93 Officer; and
  - 94 (B) acts as a repository of information about the individual that can be electronically
  - 95 retrieved and used to facilitate the individual's online interaction with a state agency;
  - 96 (o) information provided to the Commissioner of Insurance under:
    - 97 (i) Subsection [31A-23a-115\(3\)\(a\)](#);
    - 98 (ii) Subsection [31A-23a-302\(4\)](#); or
    - 99 (iii) Subsection [31A-26-210\(4\)](#);
    - 100 (p) information obtained through a criminal background check under Title 11, Chapter
    - 101 [40](#), Criminal Background Checks by Political Subdivisions Operating Water Systems;
    - 102 (q) information provided by an offender that is:
      - 103 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
      - 104 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
      - 105 (ii) not required to be made available to the public under Subsection [77-41-110\(4\)](#) or
      - 106 [77-43-108\(4\)](#);
      - 107 (r) a statement and any supporting documentation filed with the attorney general in
      - 108 accordance with Section [34-45-107](#), if the federal law or action supporting the filing involves
      - 109 homeland security;
      - 110 (s) electronic toll collection customer account information received or collected under
      - 111 Section [72-6-118](#) and customer information described in Section [17B-2a-815](#) received or
      - 112 collected by a public transit district, including contact and payment information and customer
      - 113 travel data;
      - 114 (t) an email address provided by a military or overseas voter under Section
      - 115 [20A-16-501](#);
      - 116 (u) a completed military-overseas ballot that is electronically transmitted under Title
      - 117 [20A](#), Chapter 16, Uniform Military and Overseas Voters Act;
      - 118 (v) records received by or generated by or for the Political Subdivisions Ethics Review
      - 119 Commission established in Section [63A-15-201](#), except for:
        - 120 (i) the commission's summary data report that is required in Section [63A-15-202](#); and

- 121 (ii) any other document that is classified as public in accordance with Title 63A,  
122 Chapter 15, Political Subdivisions Ethics Review Commission;
- 123 (w) a record described in Section 53G-9-604 that verifies that a parent was notified of  
124 an incident or threat;
- 125 (x) a criminal background check or credit history report conducted in accordance with  
126 Section 63A-3-201;
- 127 (y) a record described in Subsection 53-5a-104(7);
- 128 (z) on a record maintained by a county for the purpose of administering property taxes,  
129 an individual's:
- 130 (i) email address;
- 131 (ii) phone number; or
- 132 (iii) personal financial information related to a person's payment method;
- 133 (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an  
134 exemption, deferral, abatement, or relief under:
- 135 (i) Title 59, Chapter 2, Part 11, Exemptions, Deferrals, and Abatements;
- 136 (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
- 137 (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
- 138 (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
- 139 (bb) a record provided by the State Tax Commission in response to a request under  
140 Subsection 59-1-403(4)(y)(iii);
- 141 (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual  
142 child welfare case, as described in Subsection 36-33-103(3); [~~and~~]
- 143 (dd) a record relating to drug or alcohol testing of a state employee under Section  
144 63A-17-1004[-]; and
- 145 (ee) a criminal history record under Title 80, Chapter 8, Background Checks.
- 146 (2) The following records are private if properly classified by a governmental entity:
- 147 (a) records concerning a current or former employee of, or applicant for employment  
148 with a governmental entity, including performance evaluations and personal status information  
149 such as race, religion, or disabilities, but not including records that are public under Subsection  
150 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
- 151 (b) records describing an individual's finances, except that the following are public:

- 152 (i) records described in Subsection [63G-2-301\(2\)](#);
- 153 (ii) information provided to the governmental entity for the purpose of complying with  
154 a financial assurance requirement; or
- 155 (iii) records that must be disclosed in accordance with another statute;
- 156 (c) records of independent state agencies if the disclosure of those records would  
157 conflict with the fiduciary obligations of the agency;
- 158 (d) other records containing data on individuals the disclosure of which constitutes a  
159 clearly unwarranted invasion of personal privacy;
- 160 (e) records provided by the United States or by a government entity outside the state  
161 that are given with the requirement that the records be managed as private records, if the  
162 providing entity states in writing that the record would not be subject to public disclosure if  
163 retained by it;
- 164 (f) any portion of a record in the custody of the Division of Aging and Adult Services,  
165 created in Section [62A-3-102](#), that may disclose, or lead to the discovery of, the identity of a  
166 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and
- 167 (g) audio and video recordings created by a body-worn camera, as defined in Section  
168 [77-7a-103](#), that record sound or images inside a home or residence except for recordings that:
  - 169 (i) depict the commission of an alleged crime;
  - 170 (ii) record any encounter between a law enforcement officer and a person that results in  
171 death or bodily injury, or includes an instance when an officer fires a weapon;
  - 172 (iii) record any encounter that is the subject of a complaint or a legal proceeding  
173 against a law enforcement officer or law enforcement agency;
  - 174 (iv) contain an officer involved critical incident as defined in Subsection  
175 [76-2-408\(1\)\(f\)](#); or
  - 176 (v) have been requested for reclassification as a public record by a subject or  
177 authorized agent of a subject featured in the recording.
- 178 (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
179 records, statements, history, diagnosis, condition, treatment, and evaluation.
- 180 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
181 doctors, or affiliated entities are not private records or controlled records under Section  
182 [63G-2-304](#) when the records are sought:

- 183 (i) in connection with any legal or administrative proceeding in which the patient's  
184 physical, mental, or emotional condition is an element of any claim or defense; or  
185 (ii) after a patient's death, in any legal or administrative proceeding in which any party  
186 relies upon the condition as an element of the claim or defense.  
187 (c) Medical records are subject to production in a legal or administrative proceeding  
188 according to state or federal statutes or rules of procedure and evidence as if the medical  
189 records were in the possession of a nongovernmental medical care provider.

190 Section 2. Section **80-8-101** is enacted to read:

## 191 **CHAPTER 8. BACKGROUND CHECKS**

### 192 **Part 1. General Provisions**

#### 193 **80-8-101. Definitions.**

194 As used in this chapter:

- 195 (1) "Administrator" means a person responsible for deciding to engage an individual  
196 for a position where the individual will have direct contact with a child.  
197 (2) "Bureau" means the Bureau of Criminal Identification created in Section  
198 53-10-201.  
199 (3) "Criminal history record" means the results from state and federal criminal history  
200 background checks performed by the Bureau.  
201 (4) "Direct contact with a child" means:  
202 (a) the care, supervision, guidance, or control of a qualifying child; or  
203 (b) routine interaction with a qualifying child.  
204 (5) "Engage" means to employ, contract with, or select as a volunteer.  
205 (6) "Qualifying child" means a child of someone other than the individual who has  
206 direct contact with the child.  
207 (7) "Qualifying individual" means an individual who, as an employee, independent  
208 contractor, or volunteer, has direct contact with a qualifying child.  
209 (8) "Routine interaction" means regular and repeated contact that is integral to an  
210 individual's employment, contract, or volunteer responsibilities.

211 Section 3. Section **80-8-102** is enacted to read:

#### 212 **80-8-102. Use of information.**

213 An administrator may not:

214 (1) disclose the contents of a criminal history record provided under this chapter to  
215 anyone who is not directly involved in considering whether to engage the individual who is the  
216 subject of the report; or

217 (2) use the information in a criminal history record for any purpose other than  
218 considering whether to engage the individual who is the subject of the report.

219 Section 4. Section **80-8-201** is enacted to read:

220 **Part 2. Background Checks**

221 **80-8-201. Criminal background checks required.**

222 (1) Except as provided in Subsection (5), by no later than December 31, 2023, a  
223 qualifying individual shall submit a copy of the individual's criminal history record to the  
224 administrator for the qualifying individual's position.

225 (2) Except as provided in Subsection (6), beginning December 31, 2023:

226 (a) an individual who seeks to be engaged for a position that would make the  
227 individual a qualifying individual shall provide a copy of the individual's criminal history  
228 record to the administrator for that position; and

229 (b) before engaging an individual for a role that would make the individual a qualifying  
230 individual, an administrator shall require the individual to submit a copy of the individual's  
231 criminal history record to the administrator.

232 (3) Except as provided in Subsection (6), an administrator shall maintain a copy of  
233 each criminal history record provided to the administrator under Subsections (1) and (2).

234 (4) (a) A qualifying individual who is required to submit a criminal history record  
235 under this section shall:

236 (i) submit to the Bureau a criminal history record application prescribed by the Bureau;  
237 and

238 (ii) pay an application fee as determined by the Bureau under Section [63J-1-504](#).

239 (b) For a completed application submitted under Subsection (4)(a), the Bureau shall:

240 (i) check state criminal background databases for the individual's criminal history;

241 (ii) check national criminal background databases for the individual's criminal history;

242 and

243 (iii) provide the individual a copy of the individual's criminal history record.

244 (5) A qualifying individual who was subject to a state and federal criminal background



245 check related to the qualifying individual's position on or after December 31, 2018, and who is  
246 not subject to Subsection (6), shall submit an updated criminal history record in accordance  
247 with Section 80-8-202.

248 (6) (a) Subsection (2)(a) does not apply to an individual who is otherwise required by  
249 state or federal law to complete a state and federal criminal background check in relation to the  
250 position for which the individual seeks to be engaged.

251 (b) Subsections (2)(b) and (3) do not apply to an administrator who is otherwise  
252 required by federal or state law to complete a state and federal criminal background check for  
253 an individual who is being considered for a position where the individual will have direct  
254 contact with a child.

255 Section 5. Section **80-8-202** is enacted to read:

256 **80-8-202. Background check renewal.**

257 (1) A qualifying individual who is subject to Subsection 80-8-201(1) or 80-8-201(2)(a)  
258 shall submit to the qualifying individual's administrator an updated criminal history record no  
259 later than 60 months after the date of the qualifying individual's most recent criminal history  
260 record.

261 (2) An administrator who is subject to Subsection 80-8-201(2)(b) shall require each  
262 qualifying individual engaged by the administrator to submit an updated criminal history record  
263 to the administrator no later than 60 months after the date of the qualifying individual's most  
264 recent criminal history record.

265 Section 6. Section **80-8-203** is enacted to read:

266 **80-8-203. Penalty.**

267 (1) Terms defined in Section 76-1-101.5 apply to this section.

268 (2) It is unlawful for a person who is subject to Subsection 80-8-201(2)(b) to:

269 (a) willfully fail to require an individual to submit the individual's criminal history  
270 record before engaging the individual for a position where the individual will have direct  
271 contact with a child; or

272 (b) willfully fail to maintain a copy of information submitted to the person under  
273 Subsection 80-8-201(1) or 80-8-201(2)(a).

274 (3) A person who violates Subsection (2) is guilty of a class C misdemeanor.