

BACKGROUND CHECK AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill modifies the Public Safety Code regarding criminal background check information.

Highlighted Provisions:

This bill:

- clarifies that criminal history record information that does not relate to a conviction may not be released to an entity requesting an employment background check.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-108, as last amended by Laws of Utah 2012, Chapter 239

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

Section 1. Section **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records -- Penalty for misuse of records.

(1) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

30 (a) criminal justice agencies for purposes of administration of criminal justice and for
31 employment screening by criminal justice agencies;

32 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
33 executive order, court rule, court order, or local ordinance;

34 (c) agencies or individuals for the purpose of obtaining required clearances connected
35 with foreign travel or obtaining citizenship;

36 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
37 agency to provide services required for the administration of criminal justice; and

38 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
39 purposes for which given, and ensure the security and confidentiality of the data;

40 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
41 accordance with the requirements of Sections [78B-6-128](#) and [78B-6-130](#);

42 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
43 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
44 agency; and

45 (ii) private security agencies through guidelines established by the commissioner for
46 employment background checks for their own employees and prospective employees;

47 (g) a qualifying entity for employment background checks for their own employees and
48 persons who have applied for employment with the qualifying entity; and

49 (h) other agencies and individuals as the commissioner authorizes and finds necessary
50 for protection of life and property and for offender identification, apprehension, and
51 prosecution pursuant to an agreement.

52 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access
53 to data, limit the use of data to research, evaluative, or statistical purposes, preserve the
54 anonymity of individuals to whom the information relates, and ensure the confidentiality and
55 security of the data.

56 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
57 obtain a signed waiver from the person whose information is requested.

- 58 (b) The waiver must notify the signee:
- 59 (i) that a criminal history background check will be conducted;
- 60 (ii) who will see the information; and
- 61 (iii) how the information will be used.
- 62 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:
- 63 (i) available to persons involved in the hiring or background investigation of the
- 64 employee; and
- 65 (ii) used for the purpose of assisting in making an employment or promotion decision.
- 66 (d) A person who disseminates or uses information obtained from the division under
- 67 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
- 68 any penalties provided under this section, is subject to civil liability.
- 69 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide
- 70 the employee or employment applicant an opportunity to:
- 71 (i) review the information received as provided under Subsection (8); and
- 72 (ii) respond to any information received.
- 73 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 74 division may make rules to implement this Subsection (3).
- 75 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.
- 76 (ii) The name check fee under Subsection (1)(g) is \$15.
- 77 (iii) These fees remain in effect until changed by the division through the process under
- 78 Section [63J-1-504](#).
- 79 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
- 80 deposited in the General Fund as a dedicated credit by the department to cover the costs
- 81 incurred in providing the information.
- 82 (h) The division or its employees are not liable for defamation, invasion of privacy,
- 83 negligence, or any other claim in connection with the contents of information disseminated
- 84 under Subsection (1)(g).
- 85 (4) (a) Any criminal history record information obtained from division files may be

86 used only for the purposes for which it was provided and may not be further disseminated,
87 except under Subsections (4)(b) and (c).

88 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
89 provided by the agency to the person who is the subject of the history, another licensed
90 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
91 adoption.

92 (c) A criminal history of a defendant provided to a criminal justice agency under
93 Subsection (1)(a) may also be provided by the prosecutor to a defendant's defense counsel,
94 upon request during the discovery process, for the purpose of establishing a defense in a
95 criminal case.

96 ~~[(5) If an individual has no prior criminal convictions, criminal history record
97 information contained in the division's computerized criminal history files may not include
98 arrest or disposition data concerning an individual who has been acquitted, the person's charges
99 dismissed, or when no complaint against the person has been filed.]~~

100 (5) The division may not disseminate criminal history record information to qualifying
101 entities under Subsection (1)(g) regarding employment background checks if the information is
102 related to charges:

103 (a) that have been declined for prosecution;

104 (b) that have been dismissed; or

105 (c) regarding which a person has been acquitted.

106 (6) (a) This section does not preclude the use of the division's central computing
107 facilities for the storage and retrieval of criminal history record information.

108 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
109 unauthorized agencies or individuals.

110 (7) Direct access through remote computer terminals to criminal history record
111 information in the division's files is limited to those agencies authorized by the commissioner
112 under procedures designed to prevent unauthorized access to this information.

113 (8) (a) The commissioner shall establish procedures to allow an individual right of

114 access to review and receive a copy of the individual's criminal history report.

115 (b) A processing fee for the right of access service, including obtaining a copy of the
116 individual's criminal history report under Subsection (8)(a) is \$15. This fee remains in effect
117 until changed by the commissioner through the process under Section [63J-1-504](#).

118 (c) (i) The commissioner shall establish procedures for an individual to challenge the
119 completeness and accuracy of criminal history record information contained in the division's
120 computerized criminal history files regarding that individual.

121 (ii) These procedures shall include provisions for amending any information found to
122 be inaccurate or incomplete.

123 (9) The private security agencies as provided in Subsection (1)(f)(ii):

124 (a) shall be charged for access; and

125 (b) shall be registered with the division according to rules made by the division under
126 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

127 (10) Before providing information requested under this section, the division shall give
128 priority to criminal justice agencies needs.

129 (11) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
130 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
131 division or any information contained in a record created, maintained, or to which access is
132 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
133 policy of a governmental entity.

134 (b) A person who discovers or becomes aware of any unauthorized use of records
135 created or maintained, or to which access is granted by the division shall inform the
136 commissioner and the director of the Utah Bureau of Criminal Identification of the
137 unauthorized use.