

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2678 Session of 2018

INTRODUCED BY B. O'NEILL AND WHEATLEY, OCTOBER 1, 2018

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 1, 2018

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled,  
 2 as amended, "An act providing for and reorganizing the  
 3 conduct of the executive and administrative work of the  
 4 Commonwealth by the Executive Department thereof and the  
 5 administrative departments, boards, commissions, and officers  
 6 thereof, including the boards of trustees of State Normal  
 7 Schools, or Teachers Colleges; abolishing, creating,  
 8 reorganizing or authorizing the reorganization of certain  
 9 administrative departments, boards, and commissions; defining  
 10 the powers and duties of the Governor and other executive and  
 11 administrative officers, and of the several administrative  
 12 departments, boards, commissions, and officers; fixing the  
 13 salaries of the Governor, Lieutenant Governor, and certain  
 14 other executive and administrative officers; providing for  
 15 the appointment of certain administrative officers, and of  
 16 all deputies and other assistants and employes in certain  
 17 departments, boards, and commissions; providing for judicial  
 18 administration; and prescribing the manner in which the  
 19 number and compensation of the deputies and all other  
 20 assistants and employes of certain departments, boards and  
 21 commissions shall be determined," in administrative  
 22 organization, repealing provisions relating to employees with  
 23 access to Federal tax information and providing for criminal  
 24 history background checks of employees and contractors with  
 25 access to Federal tax information.

26 The General Assembly of the Commonwealth of Pennsylvania

27 hereby enacts as follows:

28 Section 1. Section 225 of the act of April 9, 1929 (P.L.177,  
 29 No.175), known as The Administrative Code of 1929, added October  
 30 30, 2017 (P.L.379, No.40), is repealed:

1 [Section 225. Employees with Access to Federal Tax  
2 Information.--(a) As required under any Federal law, regulation  
3 or published guidance from the Internal Revenue Service, an  
4 employe or prospective employe whose duties and responsibilities  
5 require or will require access to Federal tax information shall  
6 submit all of the following to the employe's or prospective  
7 employe's employer:

8 (1) A report of Federal criminal history record information.

9 (2) A report of criminal history record information from the  
10 Pennsylvania State Police as provided under 18 Pa.C.S. Ch. 91  
11 (relating to criminal history record information) or a statement  
12 from the Pennsylvania State Police that the Pennsylvania State  
13 Police central repository contains no information relating to  
14 the individual. The criminal history record information shall be  
15 limited to that which is disseminated under 18 Pa.C.S. § 9121(b)  
16 (2) (relating to general regulations).

17 (3) Validation of the employe's or prospective employe's  
18 eligibility to legally work in the United States.

19 (b) For the purpose of complying with subsection (a)(1), an  
20 employe or prospective employe shall provide fingerprints to the  
21 Pennsylvania State Police, its agent or an agent approved for  
22 fingerprinting by the Federal Government. The fingerprints may  
23 be used by the Pennsylvania State Police to conduct a criminal  
24 background check and shall be forwarded to the Federal Bureau of  
25 Investigation for a national criminal background check.

26 (c) (1) Except as provided under paragraph (2), information  
27 relating to an employe or prospective employe submitted to or  
28 obtained by an employer or prospective employer under this  
29 section shall be interpreted and used only to determine the  
30 employe's or prospective employe's character, fitness and

1 suitability to access Federal tax information.

2 (2) An employer may utilize information obtained under this  
3 section for employment decisions, including hiring of an  
4 applicant, promotion of a current employe or disciplinary action  
5 against an employe regarding a position that requires access to  
6 Federal tax information.

7 (3) An employer may receive and retain information  
8 consistent with this section that is otherwise protected under  
9 18 Pa.C.S. Ch. 91, subject to any requirements related to  
10 redaction as specified in 18 Pa.C.S. § 9121(b)(2).

11 (d) An individual who has been cleared to access Federal tax  
12 information under this section shall reapply for clearance under  
13 subsections (a) and (b) within ten years of the issuance of the  
14 prior clearance unless the employer participates in a program  
15 exempting employes from clearance.

16 (e) A Commonwealth agency receiving Federal tax information  
17 that transfers the Federal tax information to any other entity  
18 except as it involves a Federal or State court or the Board of  
19 Finance and Revenue as part of a legal proceeding before the  
20 same may audit that entity to determine compliance with this  
21 section.

22 (f) The Department of Revenue shall publish guidelines to  
23 implement this section.

24 (g) As used in this section, the following words and phrases  
25 shall have the meanings given to them in this subsection unless  
26 the context clearly indicates otherwise:

27 "Employer." Any Commonwealth agency, office, department,  
28 authority, board, multistate agency or commission of the  
29 executive branch, an independent agency or State-affiliated  
30 entity, political subdivision or a contractor thereof, receiving

1 Federal tax information, even though the Federal tax information  
2 may be forwarded to another Commonwealth agency, political  
3 subdivision or contractor, from any of the following:

- 4 (1) The Internal Revenue Service.
- 5 (2) The Social Security Administration.
- 6 (3) Under section 6103 of the Internal Revenue Code of 1986  
7 (Public Law 99-514, 26 U.S.C. § 6103).
- 8 (4) By exchange agreement approved by the Internal Revenue  
9 Service.
- 10 (5) Any other secondary source.

11 "Federal tax information." Includes any "return" or "return  
12 information" as defined in section 6103 of the Internal Revenue  
13 Code of 1986.]

14 Section 2. The act is amended by adding a section to read:

15 Section 226. Criminal History Background Checks of Employees  
16 and Contractors with Access to Federal Tax Information.--(a) An  
17 agency shall require any current or prospective employe or  
18 contractor whose duties and responsibilities require, or will  
19 require, access to Federal tax information to submit to a  
20 criminal history background check to be conducted by the  
21 Pennsylvania State Police. A current or prospective employe or  
22 contractor shall submit fingerprints and other identifying  
23 information to the Pennsylvania State Police. An individual who  
24 refuses to comply with this subsection will not be considered  
25 suitable to access Federal tax information for purposes of  
26 subsection (c).

27 (b) When a criminal history background check is requested  
28 under subsection (a), the Pennsylvania State Police, or its  
29 designee, shall do all of the following:

- 30 (1) Provide the agency with a report of the individual's

1 criminal history record information as defined by 18 Pa.C.S. §  
2 9102 (relating to definitions) or a statement that the  
3 Pennsylvania State Police central repository contains no  
4 information relating to the individual. The criminal history  
5 record information shall be limited to that which is  
6 disseminated under 18 Pa.C.S. § 9121(b) (2) (relating to general  
7 regulations).

8 (2) Submit the individual's fingerprints to the Federal  
9 Bureau of Investigation for a national criminal history records  
10 check.

11 (3) Provide the agency with the national criminal history  
12 record information of the individual. The information provided  
13 under this subsection may not be limited by 18 Pa.C.S. § 9121(b)  
14 (2).

15 (c) Information relating to a current or prospective employe  
16 or contractor submitted to or obtained by an agency under this  
17 section shall be interpreted and used only to determine the  
18 individual's character, fitness and suitability to access  
19 Federal tax information. If an agency determines an individual  
20 is not suitable to access Federal tax information, the agency  
21 shall take appropriate action, including:

22 (1) declining to hire or utilize the services of the  
23 individual;

24 (2) transferring the individual to a position that does not  
25 require access to Federal tax information; or

26 (3) terminating the individual's employment.

27 (d) An agency may receive and retain information consistent  
28 with this section that is otherwise protected under 18 Pa.C.S.  
29 Ch. 91 (relating to criminal history record information),  
30 subject to any requirements related to redaction as specified in

1 18 Pa.C.S. § 9121(b)(2) with respect to information described in  
2 subsection (b)(1). All information received and retained by an  
3 agency in accordance with this section shall be marked as  
4 confidential and shall be excluded from any requirement of  
5 public disclosure as a public record.

6 (e) An individual who has been determined suitable to access  
7 Federal tax information under this section shall resubmit to a  
8 criminal history background check under subsections (a) and (b)  
9 within ten years of the individual's last check under this  
10 section, unless the agency participates in a program exempting  
11 employees from clearance.

12 (f) An agency receiving Federal tax information that  
13 transfers the Federal tax information to any other entity except  
14 as it involves a Federal or State court or the Board of Finance  
15 and Revenue as part of a legal proceeding before the same may  
16 audit that entity to determine compliance with this section.

17 (g) The Department of Revenue may publish guidelines to  
18 implement this section.

19 (h) As used in this section, the following words and phrases  
20 shall have the meanings given to them in this subsection unless  
21 the context clearly indicates otherwise:

22 "Agency." A Commonwealth agency, office, department,  
23 authority, board or commission of the executive branch or a  
24 political subdivision receiving Federal tax information, even  
25 though the Federal tax information may be forwarded to the  
26 agency from or through any of the following:

27 (i) The Internal Revenue Service.

28 (ii) The Social Security Administration.

29 (iii) A permitted disclosure under section 6103 of the  
30 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §

1 6103).

2 (iv) By exchange agreement approved by the Internal Revenue  
3 Service.

4 (v) Any other secondary source.

5 "Contractor." An individual who is not an employe of an  
6 agency and performs work functions for an agency under the terms  
7 of a written agreement, regardless of whether the written  
8 agreement is directly with the agency or a third party.

9 "Federal tax information." Includes any "return" or "return  
10 information" as defined in section 6103 of the Internal Revenue  
11 Code of 1986.

12 Section 3. This act shall take effect in 60 days.