

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 613 Session of
2019

INTRODUCED BY MENSCH, APRIL 30, 2019

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 7, 2020

AN ACT

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

28 The General Assembly of the Commonwealth of Pennsylvania

29 hereby enacts as follows:

30 Section 1. Section 225 of the act of April 9, 1929 (P.L.177,

1 No.175), known as The Administrative Code of 1929, is repealed:

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

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

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

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

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

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

1 employe's or prospective employe's character, fitness and
2 suitability to access Federal tax information.

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

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

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

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

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

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

28 "Employer." Any Commonwealth agency, office, department,
29 authority, board, multistate agency or commission of the
30 executive branch, an independent agency or State-affiliated

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

5 (1) The Internal Revenue Service.

6 (2) The Social Security Administration.

7 (3) Under section 6103 of the Internal Revenue Code of 1986
8 (Public Law 99-514, 26 U.S.C. § 6103).

9 (4) By exchange agreement approved by the Internal Revenue
10 Service.

11 (5) Any other secondary source.

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

15 Section 2. ~~The act is amended by adding a section to read: <--~~

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

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

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

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

12 ~~(3) Provide the agency with the national criminal history~~
13 ~~record information of the individual. The information provided~~
14 ~~under this subsection may not be limited by 18 Pa.C.S. § 9121(b)~~
15 ~~(2).~~

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

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

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

27 ~~(3) terminating the individual's employment.~~

28 ~~(d) An agency may receive and retain information consistent~~
29 ~~with this section that is otherwise protected under 18 Pa.C.S.~~
30 ~~Ch. 91 (relating to criminal history record information),~~

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

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

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

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

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

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

28 ~~(1) The Internal Revenue Service.~~

29 ~~(2) The Social Security Administration.~~

30 ~~(3) A permitted disclosure under section 6103 of the~~

1 ~~Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §~~
2 ~~6103).~~

3 ~~(4) By exchange agreement approved by the Internal Revenue~~
4 ~~Service.~~

5 ~~(5) Any other secondary source.~~

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

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

13 ~~Section 3. This act shall take effect in 60 days.~~

14 SECTION 2. SECTION 226 OF THE ACT, ADDED JUNE 28, 2019
15 (P.L.101, NO.15), IS REENACTED TO READ:

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16 SECTION 226. CRIMINAL HISTORY BACKGROUND CHECKS OF EMPLOYES
17 AND CONTRACTORS WITH ACCESS TO FEDERAL TAX INFORMATION.-- (A) AN
18 AGENCY SHALL REQUIRE ANY CURRENT OR PROSPECTIVE EMPLOYE OR
19 CONTRACTOR WHOSE DUTIES AND RESPONSIBILITIES REQUIRE, OR WILL
20 REQUIRE, ACCESS TO FEDERAL TAX INFORMATION TO SUBMIT TO A
21 CRIMINAL HISTORY BACKGROUND CHECK TO BE CONDUCTED BY THE
22 PENNSYLVANIA STATE POLICE. A CURRENT OR PROSPECTIVE EMPLOYE OR
23 CONTRACTOR SHALL SUBMIT FINGERPRINTS AND OTHER IDENTIFYING
24 INFORMATION TO THE PENNSYLVANIA STATE POLICE. AN INDIVIDUAL WHO
25 REFUSES TO COMPLY WITH THIS SUBSECTION WILL NOT BE CONSIDERED
26 SUITABLE TO ACCESS FEDERAL TAX INFORMATION FOR PURPOSES OF
27 SUBSECTION (C).

28 (B) WHEN A CRIMINAL HISTORY BACKGROUND CHECK IS REQUESTED
29 UNDER SUBSECTION (A), THE PENNSYLVANIA STATE POLICE, OR ITS
30 DESIGNEE, SHALL DO ALL OF THE FOLLOWING:

1 (1) PROVIDE THE AGENCY WITH A REPORT OF THE INDIVIDUAL'S
2 CRIMINAL HISTORY RECORD INFORMATION AS DEFINED BY 18 PA.C.S. §
3 9102 (RELATING TO DEFINITIONS) OR A STATEMENT THAT THE
4 PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY CONTAINS NO
5 INFORMATION RELATING TO THE INDIVIDUAL. THE CRIMINAL HISTORY
6 RECORD INFORMATION SHALL BE LIMITED TO THAT WHICH IS
7 DISSEMINATED UNDER 18 PA.C.S. § 9121(B) (2) (RELATING TO GENERAL
8 REGULATIONS).

9 (2) SUBMIT THE INDIVIDUAL'S FINGERPRINTS TO THE FEDERAL
10 BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS
11 CHECK.

12 (3) PROVIDE THE AGENCY WITH THE NATIONAL CRIMINAL HISTORY
13 RECORD INFORMATION OF THE INDIVIDUAL. THE INFORMATION PROVIDED
14 UNDER THIS SUBSECTION MAY NOT BE LIMITED BY 18 PA.C.S. § 9121(B)
15 (2).

16 (C) INFORMATION RELATING TO A CURRENT OR PROSPECTIVE EMPLOYEE
17 OR CONTRACTOR SUBMITTED TO OR OBTAINED BY AN AGENCY UNDER THIS
18 SECTION SHALL BE INTERPRETED AND USED ONLY TO DETERMINE THE
19 INDIVIDUAL'S CHARACTER, FITNESS AND SUITABILITY TO ACCESS
20 FEDERAL TAX INFORMATION. IF AN AGENCY DETERMINES AN INDIVIDUAL
21 IS NOT SUITABLE TO ACCESS FEDERAL TAX INFORMATION, THE AGENCY
22 SHALL TAKE APPROPRIATE ACTION, INCLUDING:

23 (1) DECLINING TO HIRE OR UTILIZE THE SERVICES OF THE
24 INDIVIDUAL;

25 (2) TRANSFERRING THE INDIVIDUAL TO A POSITION THAT DOES NOT
26 REQUIRE ACCESS TO FEDERAL TAX INFORMATION; OR

27 (3) TERMINATING THE INDIVIDUAL'S EMPLOYMENT.

28 (D) AN AGENCY MAY RECEIVE AND RETAIN INFORMATION CONSISTENT
29 WITH THIS SECTION THAT IS OTHERWISE PROTECTED UNDER 18 PA.C.S.
30 CH. 91 (RELATING TO CRIMINAL HISTORY RECORD INFORMATION),

1 SUBJECT TO ANY REQUIREMENTS RELATED TO REDACTION AS SPECIFIED IN
2 18 PA.C.S. § 9121(B)(2) WITH RESPECT TO INFORMATION DESCRIBED IN
3 SUBSECTION (B)(1). ALL INFORMATION RECEIVED AND RETAINED BY AN
4 AGENCY IN ACCORDANCE WITH THIS SECTION SHALL BE MARKED AS
5 CONFIDENTIAL AND SHALL BE EXCLUDED FROM ANY REQUIREMENT OF
6 PUBLIC DISCLOSURE AS A PUBLIC RECORD.

7 (E) AN INDIVIDUAL WHO HAS BEEN DETERMINED SUITABLE TO ACCESS
8 FEDERAL TAX INFORMATION UNDER THIS SECTION SHALL RESUBMIT TO A
9 CRIMINAL HISTORY BACKGROUND CHECK UNDER SUBSECTIONS (A) AND (B)
10 WITHIN TEN YEARS OF THE INDIVIDUAL'S LAST CHECK UNDER THIS
11 SECTION, UNLESS THE AGENCY PARTICIPATES IN A PROGRAM EXEMPTING
12 EMPLOYEES FROM CLEARANCE.

13 (F) AN AGENCY RECEIVING FEDERAL TAX INFORMATION THAT
14 TRANSFERS THE FEDERAL TAX INFORMATION TO ANY OTHER ENTITY EXCEPT
15 AS IT INVOLVES A FEDERAL OR STATE COURT OR THE BOARD OF FINANCE
16 AND REVENUE AS PART OF A LEGAL PROCEEDING BEFORE THE SAME MAY
17 AUDIT THAT ENTITY TO DETERMINE COMPLIANCE WITH THIS SECTION.

18 (G) THE DEPARTMENT OF REVENUE MAY PUBLISH GUIDELINES TO
19 IMPLEMENT THIS SECTION.

20 (H) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES
21 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS
22 THE CONTEXT CLEARLY INDICATES OTHERWISE:

23 "AGENCY." A COMMONWEALTH AGENCY, OFFICE, DEPARTMENT,
24 AUTHORITY, BOARD OR COMMISSION OF THE EXECUTIVE BRANCH OR A
25 POLITICAL SUBDIVISION RECEIVING FEDERAL TAX INFORMATION, EVEN
26 THOUGH THE FEDERAL TAX INFORMATION MAY BE FORWARDED TO THE
27 AGENCY FROM OR THROUGH ANY OF THE FOLLOWING:

28 (1) THE INTERNAL REVENUE SERVICE.

29 (2) THE SOCIAL SECURITY ADMINISTRATION.

30 (3) A PERMITTED DISCLOSURE UNDER SECTION 6103 OF THE

1 INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §
2 6103).

3 (4) BY EXCHANGE AGREEMENT APPROVED BY THE INTERNAL REVENUE
4 SERVICE.

5 (5) ANY OTHER SECONDARY SOURCE.

6 "CONTRACTOR." AN INDIVIDUAL WHO IS NOT AN EMPLOYEE OF AN
7 AGENCY AND PERFORMS WORK FUNCTIONS FOR AN AGENCY UNDER THE TERMS
8 OF A WRITTEN AGREEMENT, REGARDLESS OF WHETHER THE WRITTEN
9 AGREEMENT IS DIRECTLY WITH THE AGENCY OR A THIRD PARTY.

10 "FEDERAL TAX INFORMATION." INCLUDES ANY "RETURN" OR "RETURN
11 INFORMATION" AS DEFINED IN SECTION 6103 OF THE INTERNAL REVENUE
12 CODE OF 1986.

13 SECTION 3. THE ACT IS AMENDED BY ADDING AN ARTICLE TO READ:

14 ARTICLE XXI-C

15 COVID-19 EMERGENCY MITIGATION PLAN FOR BUSINESSES

16 SECTION 2101-C. COVID-19 EMERGENCY MITIGATION PLAN FOR
17 BUSINESSES.

18 (A) GENERAL RULE.--NOTWITHSTANDING 35 PA.C.S. PART V
19 (RELATING TO EMERGENCY MANAGEMENT SERVICES), THE GOVERNOR SHALL
20 DEVELOP AND IMPLEMENT A PLAN TO MITIGATE THE SPREAD OF COVID-19
21 FOR BUSINESSES IN THIS COMMONWEALTH PURSUANT TO SUBSECTION (B).
22 THE PLAN SHALL BE PUBLISHED ON THE DEPARTMENT OF COMMUNITY AND
23 ECONOMIC DEVELOPMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE
24 WITHIN SEVEN DAYS OF THE EFFECTIVE DATE OF THIS SECTION.

25 (B) MITIGATION PLAN FOR BUSINESS AND INDUSTRY.--THE PLAN
26 UNDER SUBSECTION (A) SHALL BE DEVELOPED USING RECOMMENDED
27 GUIDANCE FOR MITIGATING EXPOSURE TO COVID-19 FROM THE CENTERS
28 FOR DISEASE CONTROL AND PREVENTION AND SHALL CONFORM TO THE
29 MARCH 28, 2020, ADVISORY MEMORANDUM ON IDENTIFICATION OF
30 ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19

1 RESPONSE, AS PUBLISHED BY THE UNITED STATES CYBERSECURITY AND
2 INFRASTRUCTURE SECURITY AGENCY (CISA).

3 (C) COMPLIANCE.--A BUSINESS THAT COMPLIES WITH THE
4 REQUIREMENTS OF THE MITIGATION PLAN DEVELOPED UNDER SUBSECTION
5 (B) MAY OPERATE IN THIS COMMONWEALTH.

6 (D) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED
7 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

9 "BUSINESS." ANY BUSINESS, INDUSTRY OR TRADE OPERATING WITH A
10 PHYSICAL LOCATION IN THIS COMMONWEALTH, REGARDLESS OF WHETHER
11 THAT PHYSICAL LOCATION IS OPEN TO THE PUBLIC.

12 "COVID-19." THE NOVEL CORONAVIRUS, OTHERWISE KNOWN AS COVID-
13 19.

14 SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

15 (1) THE ADDITION OF ARTICLE XXI-C OF THE ACT SHALL TAKE
16 EFFECT IMMEDIATELY.

17 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
18 DAYS.