

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 613 Session of 2019

INTRODUCED BY MENSCH, APRIL 30, 2019

REFERRED TO FINANCE, APRIL 30, 2019

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 criminal history background
 24 checks of employees and contractors with access to Federal
 25 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 29 No.175), known as The Administrative Code of 1929, is repealed:

30 [Section 225. Employees with Access to Federal Tax

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

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

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

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

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

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

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

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

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

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

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

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

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

1 may be forwarded to another Commonwealth agency, political
2 subdivision or contractor, from any of the following:

3 (1) The Internal Revenue Service.

4 (2) The Social Security Administration.

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

7 (4) By exchange agreement approved by the Internal Revenue
8 Service.

9 (5) Any other secondary source.

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

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

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

29 (1) Provide the agency with a report of the individual's
30 criminal history record information as defined by 18 Pa.C.S. §

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

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

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

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

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

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

25 (3) terminating the individual's employment.

26 (d) An agency may receive and retain information consistent
27 with this section that is otherwise protected under 18 Pa.C.S.
28 Ch. 91 (relating to criminal history record information),
29 subject to any requirements related to redaction as specified in
30 18 Pa.C.S. § 9121(b) (2) with respect to information described in

1 subsection (b)(1). All information received and retained by an
2 agency in accordance with this section shall be marked as
3 confidential and shall be excluded from any requirement of
4 public disclosure as a public record.

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

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

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

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

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

26 (1) The Internal Revenue Service.

27 (2) The Social Security Administration.

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

1 (4) By exchange agreement approved by the Internal Revenue
2 Service.

3 (5) Any other secondary source.

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

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

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