HOUSE . . . . . No. 4441

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 7, 2018.

The committee on State Administration and Regulatory Oversight to whom was referred the message from His Excellency the Governor relative to recommending legislation to ensure compliance with federal standards regarding the handling of federal tax information (House, No. 4093), reports recommending that the accompanying bill (House, No. 4441) ought to pass.

For the committee,

JENNIFER E. BENSON.

FILED ON: 4/20/2018

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The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to ensure compliance with federal standards regarding the handling of federal tax information.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 6A of the General Laws, as amended by section 6 of chapter 6 of the Acts of 2017, is hereby further amended by inserting after section 18W the following section:-

Section 18X. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Access," means direct and indirect use, contact, handling or viewing of information, in both paper and electronic form, regardless of the frequency, likelihood or extent of such access or whether the access is intentional or inadvertent.

"Agency head" means the head of a state agency within an executive office of the Commonwealth of Massachusetts established under section 2 of chapter 6A, or designee(s), with current or prospective employees subject to the fingerprinting requirements of this section.

"Applicant for employment," means any individual who has applied for and may be offered employment, transfer, or promotional opportunity with a state agency, including employment as a full-time or part-time employee, apprentice, intern, temporary or seasonal employee, volunteer, contractor, sub-contractor, consultant and any employees thereof. The agency head shall determine if a position applied for requires, or will require, access to federal tax information.

"Current agency employee," means any full-time or part-time employee, apprentice, intern, temporary or seasonal employee, volunteer, contractor, sub-contractor, consultant, and any employees thereof, unless otherwise specified in this section. The agency head shall determine which current agency employees have or may have access to federal tax information.

"Federal tax information," consists of federal tax returns and return information, including any information created or derived from federal return or return information, that is in the agency's possession or control which is covered by the confidentiality protections of the Internal Revenue Code (IRC) and subject to the IRC 6103 (p)(4) safeguarding requirements including oversight by the Internal Revenue Service.

(b) An agency head shall obtain a state and national fingerprint-based criminal background check, as authorized by Public Law 92-544, to determine the suitability of any applicant for employment or current agency employee, if the position applied for or held requires or includes, or may require or include, access to federal tax information as defined in paragraph (a).

(c) Any agency for which access to federal tax information is necessary to the agency's core objective, as determined by the agency head, may deem that all applicants for

employment and current agency employees are subject to the background check requirements of this section. Notwithstanding the foregoing, an agency head may determine that specific positions are excluded from the requirements of this section. For purposes of this section, the department of revenue is deemed to be an agency for which access to federal tax information is necessary to the agency's core objectives of administration of the tax laws and the child support enforcement program. However, any and all information gained in the background check process will be used solely for the purpose of making a determination as to the suitability of a particular employee for assignment to duties in a position requiring access to federal tax information.

(d) Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist agency heads authorized under this chapter to ensure the continued suitability of these individuals for access to federal tax information. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to an agency head and authorized staff of the agency.

(e) Authorized department staff of the requesting agency may receive all available criminal offender record information to the extent required by federal law and the results of checks of state and national criminal history information databases under said Public Law 92-544. Upon receipt of the results of the state and national criminal background checks, the agency head and other authorized staff shall treat the information according to sections 167-178,

inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information. Information obtained by the agency under this section may be used only for employment purposes as it relates to access to federal tax information.

(f) There shall be a fee charged for fingerprint-based background checks under this section, established by the secretary of administration and finance in consultation with the secretary of public safety and security and the agency head, to offset the costs of operating and administering a fingerprint-based criminal background check system. The secretary of administration and finance in consultation with the secretary of public safety and security and the agency head, may increase the fee accordingly if the Federal Bureau of Investigation increases the fee for its fingerprint background check service. The Commonwealth or agency shall pay the applicable fee for current agency employees and may reimburse applicants for employment at the discretion of the agency head. Contractors, sub-contractors, consultants and any employees thereof shall not be eligible for reimbursement unless required by contract. Any fees collected from fingerprinting activity under this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund established under section 2HHHH of chapter 29.

(g) An applicant for employment who refuses to comply with the fingerprint requirements shall be deemed unsuitable for a position requiring or involving, or which may require or involve, access to federal tax information.

(h) Upon receipt of the results of a state and national criminal background check for an applicant for employment, the agency head shall review the results and determine the suitability of the applicant for employment with regard to employment in a position requiring or involving, or which may require or involve, access to federal tax information.

(i) Notwithstanding subsections 9 and 91/2 of section 4 of chapter 151B, if an agency receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the agency head may request that an applicant for employment provide additional information regarding the results of the criminal background checks to assist the agency head in determining the applicant's suitability to access federal tax information.

(j) A current agency employee who refuses to comply with the fingerprint requirements shall be deemed unsuitable for a position requiring or involving, or which may require or involve, access to federal tax information.

(k) Notwithstanding subsections 9 and 91/2 of section 4 of chapter 151B, if an agency receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the agency head may request that a current agency employee provide additional information regarding the results of the criminal background checks to assist the agency head in determining the current agency employee's suitability to access federal tax information.

(l) Upon receipt of the results of a state and national criminal background check for a current agency employee, the agency head shall review the results and determine the suitability of the current agency employee with regard to continuing access, or possible access, to federal tax information. In making such determination of suitability, the agency head shall consider mitigating factors as may be relevant to the current agency employee's employment. Unsuitability of a current employee may result in separation from employment. Notwithstanding the foregoing, should a position not requiring access to federal tax information be open and

available within the employing agency, the current agency employee may be reassigned to said position by the agency and subject to the business needs of the agency, and in accordance with any applicable law or collective bargaining agreement.

(m) Nothing in this section shall limit or preclude an agency's right to carry on a background investigation of an applicant for employment or a current agency employee using other authorized means.

(n) An agency acting under the provisions of this section shall develop and implement policies and procedures necessary to carry out this section.