

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.

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**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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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