

HOUSE No. 4812

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 25, 2018.

The committee on Ways and Means, to whom was referred the Bill to ensure compliance with federal standards regarding the handling of federal tax information (House, No. 4441), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4812).

For the committee,

JEFFREY SÁNCHEZ.

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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 is hereby amended by inserting after
2 section 18Y, inserted by section 11 of chapter 69 of the acts of 2018, the following section:-

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

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

8 “Agency” or “State Agency,” a state agency within an executive office of the
9 commonwealth established under section 2 of chapter 6A.

10 “Agency head,” the head of a state agency or a designee or designees.

11 “Applicant for employment,” any individual who has applied for or may be offered
12 employment, transfer, or promotional opportunities with a state agency, including employment

13 as a full-time or part-time employee, apprentice, intern, temporary or seasonal employee,
14 volunteer, contractor, sub-contractor, consultant and any employees thereof.

15 “Current agency employee,” any full-time or part-time employee, apprentice, intern,
16 temporary or seasonal employee, volunteer, contractor, sub-contractor, consultant, and any
17 employees thereof.

18 “Federal tax information,” federal tax returns or information created or derived from
19 federal tax returns that is in the agency’s possession or control, which is covered by the
20 confidentiality protections of the Internal Revenue Code and subject to 26 U.S.C. section 6103
21 (p)(4) safeguarding requirements, including oversight by the Internal Revenue Service.

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

26 (c) An agency for which access to federal tax information is necessary to the agency’s
27 core objective, as determined by the agency head, may deem that all applicants for employment
28 and current agency employees are subject to the background check requirements of this section;
29 provided, that the department of revenue shall be deemed to be an agency for which access to
30 federal tax information is necessary to the agency’s core objectives of administration of the tax
31 laws and the child support enforcement program. Notwithstanding the foregoing, an agency head
32 may determine that specific positions are excluded from the requirements of this section.

33 (d) Fingerprints pursuant to this section shall be submitted to the state identification
34 section of the department of the state police for a state criminal history check and forwarded to

35 the Federal Bureau of Investigation for a national criminal history check, according to the
36 policies and procedures established by the state identification section of the department of the
37 state police and by the department of criminal justice information services. Fingerprint
38 submissions may be retained by the Federal Bureau of Investigation, the state identification
39 section and the department of criminal justice information services to assist agency heads
40 authorized pursuant to this chapter to ensure the continued suitability of such individuals for
41 access to federal tax information. The department of criminal justice information services may
42 disseminate the results of the state and national criminal background checks to an agency head or
43 authorized staff of the agency.

44 (e) Authorized department staff of the agency may receive all available criminal offender
45 record information to the extent required by federal law and the results of checks of state and
46 national criminal history information databases under said Public Law 92-544. Upon receipt of
47 the results of the state and national criminal background checks, the agency head and other
48 authorized staff shall treat the information in accordance with sections 167 to 178, inclusive, of
49 chapter 6 and the regulations thereunder regarding criminal offender record information.

50 (f) There shall be a fee charged for fingerprint-based background checks pursuant to this
51 section, established by the secretary of administration and finance in consultation with the
52 secretary of public safety and security and the agency head, to offset the costs of operating and
53 administering a fingerprint-based criminal background check system. The secretary of
54 administration and finance, in consultation with the secretary of public safety and security and
55 the agency head, may increase the fee accordingly if the Federal Bureau of Investigation
56 increases the fee for its fingerprint background check service. The agency shall pay the
57 applicable fee for current agency employees and may reimburse applicants for employment at

58 the discretion of the agency head. Contractors, sub-contractors, consultants and any employees
59 thereof shall not be eligible for reimbursement unless required by contract. Any fees collected
60 for fingerprint-based background checks pursuant to this section shall be deposited into the
61 Fingerprint-Based Background Check Trust Fund established pursuant to section 2HHHH of
62 chapter 29.

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

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

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

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

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

87 (l) Upon receipt of the results of a state and national criminal background check for a
88 current agency employee, the agency head shall review the results and determine the suitability
89 of the current agency employee with regard to continuing access, or possible access, to federal
90 tax information. In making such determination of suitability, the agency head shall consider
91 mitigating factors as may be relevant to the current agency employee's employment.
92 Unsuitability of a current employee may result in termination or discharge from employment;
93 provided however, that a current agency employee may be reassigned to a position that does not
94 require access to federal tax information, if said position is available and subject to the business
95 needs of the agency

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

99 (n) An agency subject to the requirements of this section shall develop and implement
100 policies and procedures necessary to carry out this section.

101 (o) Any information acquired by an agency in the background check process pursuant to
102 this section shall be used solely for the purpose of making a determination as to the suitability of
103 a particular current employee or applicant for employment for assignment to duties in a position
104 that requires or includes, or may require or include access to federal tax information.