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BILL ANALYSIS



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House Bill 5254 (Substitute H-3 as passed by the House)
Sponsor: Representative Hank Vaupel
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-4-18

CONTENT

The bill would enact the "Public Employee Fingerprint-Based Criminal History Check Act" to do the following:

- **Require each agency in the State that determined it would have to do so, to develop a written policy that ensured that its current and prospective employees who could have access to Federal information databases in the course of his or her employment underwent a fingerprint-based criminal history check.**
- **Require an agency subject to Publication 1075, upon an offer of employment to an individual, to request the Department of State Police (MSP) to conduct a fingerprint-based criminal history check on that individual.**
- **Require an agency to ensure that an employee who could have access to Federal information databases and who was already employed by the agency to complete a criminal history check.**
- **Require the MSP to conduct a criminal history check on the individual described above through its records and through the Federal Bureau of Investigation (FBI), and to report the results to the requesting agency.**
- **Prohibit an agency or its employees from disclosing the reports or its contents to any other person not involved in evaluating the individual's qualification to begin or maintain access to Federal information databases, and specify a misdemeanor penalty for a violation.**
- **Require the MSP to store and retain all fingerprints submitted in an automated fingerprint system.**
- **Require the MSP to forward all fingerprints submitted to it to the FBI for submission into the FBI's automatic fingerprint identification system.**

("Publication 1075" would mean Internal Revenue Service Regulation Publication 1075 of September 2016. Please see **BACKGROUND** for more information on Publication 1075.)

The bill would take effect 90 days after its enactment.

Definitions

"Agency" would mean a department of the State or a local department or agency, including public departments or agencies in a county, city, village, or township that in the course of conducting its business has or maintains access to Federal information databases.

"Federal information database" would mean a database of information maintained by the Federal government that contains confidential or personal information, including Federal tax information.

"Federal tax information" would mean any information created by the recipient that is derived from federal return or return information received from the Internal Revenue Service (IRS) or obtained through a secondary source such as the Social Security Administration, Federal Office of Child Support Enforcement, Bureau of the Fiscal Service, or Centers for Medicare and Medicaid Services, or another entity acting on behalf of the IRS.

"Return" would mean any tax or information return, estimated tax declaration, or refund claim, and includes amendments, supplements, supporting schedules, attachments, or lists required by or permitted under the Internal Revenue Code (IRC) and filed with the IRS by, on behalf of, or with respect to any person or entity. Examples include Forms 1040, 941, 1120, 1099, or W-2.

"Return information" would mean any information collected or generated by the IRS with regard to any person's liability or possible liability under the IRC. Return information includes the following:

- Information that the IRS obtained from any source or developed through any means that relate to the potential liability of any person under the IRC for a tax, penalty, interest, fine, forfeiture, or other imposition or offense.
- Information extracted from a return.
- Information collected by the IRS about any person's tax affairs.
- Information contained on transcripts of accounts.

Fingerprint-Based Criminal History Check; Written Policy & Confidentiality

The bill would require each agency in the State that determined it would have to do so to comply with Publication 1075 to develop a written policy that ensured that its current and prospective employees who could have access to Federal information databases in the course of his or her employment underwent the fingerprint-based criminal history check required by Publication 1075. ("Employee" would mean an individual employed by the State, an individual working for a private business entity under contract with the State, an individual working for a private business entity under contract with a county, city, village, or township, or an individual who is employed by a county, city, village, or township.)

Except as otherwise provided below, the results of a criminal history check would be confidential and would not be subject to disclosure under the Freedom of Information Act.

The results of a fingerprint-based criminal history check could be provided to the IRS or other Federal governmental entity as required by Federal regulation or law. The results of a criminal history check conducted under the proposed Act could be provided only to an agency, and could not be shared with a vendor or contractor providing employees to an agency under a contract between a vendor or contractor and an agency. The results, however, could be shared between a requesting agency and another agency in the State. In circumstances in which the civil service managed human resources functions for an agency under an executive order, the results could be shared between the agency and the civil service staff.

Criminal History Check Process & Hiring

The bill would require an agency subject to Publication 1075, upon an offer of initial employment to an individual for any full-time or part-time employment with the agency during

which he or she could have access to Federal information databases, to request from the MSP a fingerprint-based criminal history check on the individual, including a criminal records check through the FBI. The agency would have to make the request on a form and in a manner prescribed by the MSP.

Before assigning an individual to employment during which he or she could have access to Federal information databases, the agency would have to have received from the MSP a report of the results of the fingerprint-based criminal history check. The bill would not require an agency to delay hiring an individual until the criminal history check was completed. An agency would have to ensure that an employee who could have access to Federal information databases already employed by the agency on the bill's effective date completed the criminal history check.

MSP Report

The bill would require the MSP, within 30 days after receiving a proper request by an agency for a fingerprint-based criminal history check on an individual, to conduct the check and to initiate the criminal records check through the FBI. After the criminal history check was completed, the MSP would have to report the results to the requesting agency. The report would have to contain any criminal history record information on the individual maintained by the Criminal Records Division of the MSP and any information obtained from the FBI.

Criminal history record information received from the MSP could be used by an agency only to evaluate an individual's qualifications for employment. Except as required by Federal regulation or rule, an agency or its employees could not disclose the report or its contents to any person who was not directly involved in evaluating the applicant's or employee's qualifications to begin or to maintain access to Federal database information. A person who violated this prohibition would be guilty of a misdemeanor punishable by a maximum fine of \$10,000.

Report; Separation from Service

If the criminal history check had been completed for a particular employee, and the results were reported to an agency, then another fingerprint-based criminal history check would not be required for that employee provided he or she remained employed with no separation from service from the agency. For the bill's purposes, an employee would not be considered to have a separation from service if the he or she were laid off or placed on a leave of absence by the agency and returned to active employment with the agency within one year after being laid off or placed on leave of absence.

Fingerprints Storage & Retention

The MSP would have to store and retain submitted fingerprints in an automatic fingerprint identification system that provided for an automatic notification if subsequent criminal information matched fingerprints previously submitted to the FBI. If this occurred, the MSP would have to notify the requesting agency immediately. The retained fingerprints could be searched against future fingerprint submissions, including latent fingerprint searches, and any relevant results would be shared with submitting and subscribing entities.

The MSP would have to forward all fingerprints submitted to it to the FBI for retention in the FBI's automatic fingerprint identification system. If the MSP received a notification from the FBI, it would have to notify the requesting agency immediately. This requirement would not apply unless the MSP was capable of participating in the FBI's automatic fingerprint identification system.

BACKGROUND

Publication 1075 provides guidance to ensure that policies and safeguards used by agencies that received Federal tax information appropriately protect the confidentiality of that information. Accordingly, the IRC specifies that agencies must restrict access to Federal tax information only to those whose responsibilities require access. Publication 1075 prescribes minimum standards for background investigations to maintain the security of Federal tax information.

The Publication specifies that state and local agencies that are not required to implement Federal background investigation standards must establish a personnel security program that ensures a background investigation is conducted for any individual who will have access to Federal tax information. The guidance specifies, among other things, that agencies develop a written policy requiring employees, contractors, and authorized subcontractors to complete a background investigation, that the agency perform the background investigation for all employees and contractors before allowing access to Federal tax information, and that state agencies ensure a reinvestigation is performed every 10 years from the date of the previous investigation. The standards also specify that a background investigation for an individual must include at least the following:

- Review of FBI fingerprint results conducted to identify possible suitability issues.
- Check of local law enforcement agencies where the subject has lived, worked, and/or attended school within the last five years, and if applicable, of the appropriate agency for any identified arrests.
- Validation of the subject's eligibility to work legally in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

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FISCAL IMPACT

The bill would result in varying additional costs for certain governmental entities, including some State agencies and local units of government, that would be required to have fingerprint-based criminal history background checks performed on current and prospective employees who could have access to sensitive personal information.

Each fingerprint-based criminal history background check costs approximately \$42 (\$30 State-level for the Department of State Police (MSP) check, and \$12 Federal-level for the Federal Bureau of Investigation (FBI) check). Without any other mandate, these cost would be passed on by the MSP, which would receive the background check request, to affected State agencies and local units of government. Accordingly, the bill would have no fiscal impact on the MSP, as the \$42 fee defrays its costs of conducting the fingerprint-based background checks, and the costs of maintaining applicant's fingerprints in the Automated Fingerprint Identification System (AFIS), which is covered by existing appropriations.

The cost of the bill to all governmental agencies would depend upon the number of employee positions required to have fingerprint-based criminal history background checks, which cannot be determined at this time. It is assumed that on the State level, the Department of Treasury and the Department of Health and Human Services (DHHS) would have the most employees affected.

The Department of Treasury estimates that it has approximately 950 employee positions and 300 contract employee positions that would be subject to the bill's provisions, which would cost of \$52,500, based on the \$42 fee. The Department has indicated it will assume these costs under existing appropriations. The DHHS anticipates between 6,000 and 8,000 employees would need to be fingerprinted, which would cost between \$252,000 and \$336,000. At this time, the DHHS is continuing to assess which employees would be subject to the bill for a more precise estimate.

The bill would have an indeterminate fiscal impact on the judiciary and local court systems. The fiscal impact would depend on how the provisions of the bill affected court caseloads and related administrative costs. Any associated increase in penal fine revenue would increase funding to public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.