

PUBLIC EMPLOYEE FINGERPRINT-BASED CRIMINAL HISTORY CHECK ACT

Act 427 of 2018

AN ACT to require the fingerprinting of certain public employees for the purpose of receiving criminal history record information from the department of state police and the Federal Bureau of Investigation; to provide for the powers and duties of certain state and local governmental officers and entities; to provide for the collection of fees; and to prohibit the release of certain information and prescribe penalties.

History: 2018, Act 427, Eff. Mar. 20, 2019

The People of the State of Michigan enact:

15.651 Short title.

Sec. 1.

This act shall be known and may be cited as the "public employee fingerprint-based criminal history check act".

History: 2018, Act 427, Eff. Mar. 20, 2019

15.652 Definitions.

Sec. 2.

As used in this act:

(a) "Agency" means a department of this 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.

(b) "Employee" means an individual employed by this state, an individual working for a private business entity under contract with this 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.

(c) "Federal information database" means a database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information.

(d) "Publication 1075" means Internal Revenue Service Regulation Publication 1075 of September 2016.

(e) "Federal tax information" means any information created by the recipient that is derived from federal return or return information received from the Internal Revenue Service 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 Internal Revenue Service pursuant to an agreement under section 6103 of the internal revenue code, 26 USC 6103.

(f) "Return" means 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 and filed with the Internal Revenue Service by, on behalf of, or with respect to any person or entity. Examples of returns include forms filed on paper or electronically, such as forms 1040, 941, and 1120, and other informational forms, such as 1099 or W-2. Forms include supporting schedules, attachments, or lists that are supplemental to or part of such a return.

(g) "Return information" means any information collected or generated by the Internal Revenue Service with regard to any person's liability or possible liability under the internal revenue code. Return information includes, but is not limited to, information that the Internal Revenue Service obtained from any source or developed through any means that relates to the potential liability of any person under the internal revenue code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense, information extracted from a return, including names of dependents or the location of a business, the taxpayer's name, address, and identification number, information collected by the Internal Revenue Service about any person's tax affairs, even if identifiers, such as name, address,

and identification numbers, are deleted, information regarding whether a return was filed or not, is under examination, or is subject to other investigation or processing, including collection activities, and information contained on transcripts of accounts.

History: 2018, Act 427, Eff. Mar. 20, 2019

15.653 Safeguards for protecting federal tax information; current and prospective employees; criminal history check; results exempt from disclosure; exceptions.

Sec. 3.

(1) Each agency in this state that determines it must do so to comply with publication 1075 shall develop a written policy that ensures that its current and prospective employees who may have access to federal information databases in the course of his or her employment undergo the fingerprint-based criminal history check required by publication 1075.

(2) Except as otherwise provided in subsections (3), (4), and (5), the results of a criminal history check conducted under this act are confidential and are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The results of a fingerprint-based criminal history check may be provided to the Internal Revenue Service or other federal governmental entity as required by federal regulation or law.

(4) The results of a fingerprint-based criminal history check conducted under this act may only be provided to an agency and must not be shared with a vendor or contractor providing employees to an agency under a contract between a vendor or contractor and an agency. However, the results may be shared between a requesting agency and another agency in this state.

(5) In circumstances in which the civil service manages human resource functions for an agency under an executive order, the results of a fingerprint-based criminal history check may be shared between the agency and the civil service staff providing human resource services to the agency.

History: 2018, Act 427, Eff. Mar. 20, 2019

15.654 Request for fingerprint-based criminal history check; offer of employment; department of state police; use of information; automated fingerprint identification system; Federal Bureau of Investigation.

Sec. 4.

(1) Upon an offer of initial employment by an agency that is subject to publication 1075 to an individual for any full-time or part-time employment with the agency during which the individual may have access to federal information databases, the agency shall request from the department of state police a fingerprint-based criminal history check on the individual, including a criminal records check through the Federal Bureau of Investigation.

(2) Before assigning an individual to employment during which he or she may have access to federal information databases, the agency shall have received from the department of state police the report described in subsection (5). This subsection does not require an agency to delay hiring an individual until the completion of the fingerprint-based criminal history check required under this section.

(3) An agency shall ensure that an employee who may have access to federal information databases already employed by the agency on the effective date of this act completes the fingerprint-based criminal history check required under this section.

(4) An agency shall make a request to the department of state police for a fingerprint-based criminal history check required under this section on a form and in a manner prescribed by the department of state police.

(5) Within 30 days after receiving a proper request by an agency for a fingerprint-based criminal history check on an individual under this section, the department of state police shall conduct the criminal history check and initiate the criminal records check through the Federal Bureau of Investigation. After the completion of the fingerprint-based criminal history check required under this section, the department of state police shall provide a report of the results of the fingerprint-based criminal history check to the requesting agency. The report must contain any

criminal history record information on the individual maintained by the criminal records division of the department of state police and any information obtained from the Federal Bureau of Investigation.

(6) Criminal history record information received from the department of state police under subsection (5) must be used by an agency only for the purpose of evaluating an individual's qualifications for employment. Except as required by federal regulation or rule, an agency or an employee of the agency shall not disclose the report or its contents received under this section to any person who is not directly involved in evaluating the applicant's or employee's qualifications to begin or maintain access to federal information databases. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00.

(7) If the fingerprint-based criminal history check required under this section has been completed for a particular employee and the results have been reported to an agency as provided under this section, then another fingerprint-based criminal history check is not required under this section for that employee as long as the employee remains employed with no separation from service from the agency. For the purposes of this subsection, an employee is not considered to have a separation from service if the employee is laid off or placed on a leave of absence by the agency and returns to active employment with the agency within 1 year after being laid off or placed on the leave of absence.

(8) The department of state police shall store and retain fingerprints submitted under this section in an automated fingerprint identification system that provides for an automatic notification if subsequent criminal information matches fingerprints previously submitted under this section. Upon a notification under this subsection, the department of state police shall immediately notify the agency that requested the fingerprint-based criminal history check. The fingerprints retained under this act may be searched against future fingerprint submissions, and any relevant results will be shared with submitting and subscribing entities. The searches described under this subsection include latent fingerprint searches.

(9) The department of state police shall forward the fingerprints submitted under this section to the Federal Bureau of Investigation to be retained in the Federal Bureau of Investigation's automated fingerprint identification system that provides for automatic notification if criminal information matches fingerprints previously submitted to the Federal Bureau of Investigation under this subsection. If the department of state police receives a notification from the Federal Bureau of Investigation under this subsection, the department of state police shall immediately inform the agency that requested the fingerprint-based criminal history check. This subsection does not apply unless the department of state police is capable of participating in the Federal Bureau of Investigation's automated fingerprint notification system.

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