ASSEMBLY, No. 4994



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED JUNE 12, 2017

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Requires certain State and local government agency employees with access to federal tax information to undergo criminal history background checks.

CURRENT VERSION OF TEXT

As introduced.



An Act requiring certain State and local government agency employees with access to federal tax information to undergo criminal history background checks, supplementing Title 40A of the New Jersey Statutes and Title 52 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. a. A local government agency may authorize an individual employed by that agency or employed or utilized by a contractor of that agency to have access to federal tax information if the agency head or the agency head’s designee has determined, consistent with the requirements and standards of this section, that criminal history record information does not exist on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the individual from having access to federal tax information in accordance with standards established by subsection e. of this section. Additionally, a local government agency may otherwise authorize an individual employed by that agency or employed or utilized by a contractor of that agency to have access to federal tax information to the extent permitted by federal Internal Revenue Service standards governing access to federal tax information.

b. A local government agency that obtains federal tax information shall have criminal history record background checks conducted in accordance with subsection c. of this section for an individual employed by that agency or employed or utilized by a contractor of that agency who has been identified by the agency head or the agency head’s designee as being authorized to have access to federal tax information. Additionally, a follow-up criminal history record background check shall be conducted at least once every ten years for an individual employed by that agency or employed or utilized by a contractor of that agency as a condition of having continued access to federal tax information. The provisions of this subsection shall apply to a current or prospective employee of a local government agency as to whom the head of the agency or the agency head’s designee determines that federal Internal Revenue Service standards governing access to federal tax information requires a criminal history record background check. The provisions of this subsection also shall apply to an individual who is employed or utilized by a contractor who provides goods or services to a local government agency if in the performance of the contract the individual has or will have access to federal tax information and as to whom the agency head of the contracting agency or the agency head’s designee determines that federal Internal Revenue Service standards governing access to federal tax information require a criminal history record background check.

c. (1) An individual determined to require a criminal history record background check in accordance with subsection b. of this section shall submit to the agency head or the agency head’s designee that individual’s name, address, and fingerprints taken by a State or municipal law enforcement agency or by a private entity under contract with the State. The agency head or the agency head’s designee shall be authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in performing criminal history record investigations authorized under this section.

(2) The fingerprints of each individual subject to a criminal history record background check in accordance with subsection b. of this section and the written consent of that individual shall be submitted to the Superintendent of State Police for a criminal history record background check to be performed. The superintendent shall compare these fingerprints with fingerprints on file with the Bureau of Identification in the Division of State Police, Department of Law and Public Safety, and the Federal Bureau of Investigation, consistent with State and federal laws, rules, and regulations.

(3) The cost of a criminal history record background check, including all costs for administering and processing the check, may be borne by the local government agency or by the current or prospective employee in the case of a current or prospective employee of a local government agency. The cost of a criminal history record background check, including all costs for administering and processing the check, shall not be borne by the local government agency in the case of an individual employed or utilized by a contractor.

(4) (a) If a prospective employee or individual employed or utilized by a contractor refuses to consent to, or cooperate in, the securing of a criminal history record background check required by subsection b. of this section, the agency shall not employ or utilize that person in a position for which access to federal tax information is required.

(b) If a current employee of a local government agency refuses to consent to, or cooperate in, the securing of a criminal history record background check required by subsection b. of this section, the employing agency shall terminate that employee’s access to federal tax information and may remove that employee from any position requiring such access, but shall make a reasonable effort to retain that individual as an employee in another position within the agency that does not require access to federal tax information and for which the current employee is qualified.

(5) Criminal history record information subject to federal confidentiality requirements may only be used for the purposes of making, supporting, or defending decisions regarding the appointment, hiring, or retention of employees or for complying with any requirements of the federal Internal Revenue Service regarding access to federal tax information.

d. A local government agency whose employees’ job duties require access to federal tax information shall establish a policy for background investigations applicable to current and prospective employees and individuals employed or utilized by contractors subject to subsection b. of this section.

e. An individual shall be disqualified from having access to federal tax information if that individual’s criminal history background check reveals a record of conviction of any of the following crimes or offenses:

(1) in New Jersey, any crime or disorderly persons offense:

(a) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(b) involving forgery or fraudulent practices as set forth in chapter 21 of Title 2C of the New Jersey Statutes; or

(2) in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

f. (1) Notwithstanding the provisions of subsection e. of this section, an individual shall not be disqualified from having access to federal tax information on the basis of a conviction disclosed by a criminal history background check performed pursuant to subsection b. of this section if the individual has affirmatively demonstrated to the agency head or the agency head’s designee clear and convincing evidence of the individual’s rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(a) the nature and responsibility of the position involved in which access to federal tax information is authorized or required;

(b) the nature and seriousness of the offense;

(c) the circumstances under which the offense occurred;

(d) the date of the offense;

(e) the age of the individual when the offense was committed;

(f) whether the offense was an isolated or repeated incident;

(g) any social conditions which may have contributed to the offense; and

(h) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

(2) The agency head or the agency head’s designee shall make the final determination regarding the disqualification from access to federal tax information by an individual with a criminal conviction specified under this section.

g. For purposes of this section:

“Contractor” means a contractor or subcontractor that provides goods or services to a local government agency.

“Federal tax information” means federal tax returns and return information, and information derived therefrom, in the possession or control of an agency which is covered by the confidentiality protections of the federal Internal Revenue Code and subject to the safeguarding requirements of paragraph (4) of subsection (p) of section 6103 of the federal Internal Revenue Code (26 U.S.C. s.6103), including federal Internal Revenue Service oversight.

“Local government agency” means a county or municipality of the State or a division, office, agency, bureau, or instrumentality thereof.

2. a. A State agency may authorize an individual employed by that agency or employed or utilized by a contractor of that agency to have access to federal tax information if the agency head or the agency head’s designee has determined, consistent with the requirements and standards of this section, that criminal history record information does not exist on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify the individual from having access to federal tax information in accordance with standards established by subsection e. of this section. Additionally, a State agency may otherwise authorize an individual employed by that agency or employed or utilized by a contractor of that agency to have access to federal tax information to the extent permitted by federal Internal Revenue Service standards governing access to federal tax information.

b. A State agency that obtains federal tax information shall have criminal history record background checks conducted in accordance with subsection c. of this section for an individual employed by that agency or employed or utilized by a contractor of that agency who has been identified by the agency head or the agency head’s designee as being authorized to have access to federal tax information. Additionally, a follow-up criminal history record background check shall be conducted at least once every ten years for an individual employed by that agency or employed or utilized by a contractor of that agency as a condition of having continued access to federal tax information. The provisions of this subsection shall apply to a current or prospective employee of a State agency as to whom the head of the agency or the agency head’s designee determines that federal Internal Revenue Service standards governing access to federal tax information requires a criminal history record background check. The provisions of this subsection also shall apply to an individual who is employed or utilized by a contractor who provides goods or services to a State agency if in the performance of the contract the individual has or will have access to federal tax information and as to whom the agency head of the contracting agency or the agency head’s designee determines that federal Internal Revenue Service standards governing access to federal tax information require a criminal history record background check.

c. (1) An individual determined to require a criminal history record background check in accordance with subsection b. of this section shall submit to the agency head or the agency head’s designee that individual’s name, address, and fingerprints taken by a State or municipal law enforcement agency or by a private entity under contract with the State. The agency head or the agency head’s designee shall be authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in performing criminal history record investigations authorized under this section.

(2) The fingerprints of each individual subject to a criminal history record background check in accordance with subsection b. of this section and the written consent of that individual shall be submitted to the Superintendent of State Police for a criminal history record background check to be performed. The superintendent shall compare these fingerprints with fingerprints on file with the Bureau of Identification in the Division of State Police, Department of Law and Public Safety, and the Federal Bureau of Investigation, consistent with State and federal laws, rules, and regulations.

(3) The cost of a criminal history record background check, including all costs for administering and processing the check, shall be borne by the State agency in the case of a current or prospective employee of the State agency. The cost of a criminal history record background check, including all costs for administering and processing the check, shall not be borne by the State agency in the case of an individual employed or utilized by a contractor.

(4) (a) If a prospective employee or individual employed or utilized by a contractor refuses to consent to, or cooperate in, the securing of a criminal history record background check required by subsection b. of this section, the agency shall not employ or utilize that person in a position for which access to federal tax information is required.

(b) If a current employee of a State agency refuses to consent to, or cooperate in, the securing of a criminal history record background check required by subsection b. of this section, the employing agency shall terminate that employee’s access to federal tax information and may remove that employee from any position requiring such access, but shall make a reasonable effort to retain that individual as an employee in another position within the agency that does not require access to federal tax information and for which the current employee is qualified.

(5) Criminal history record information subject to federal confidentiality requirements may only be used for the purposes of making, supporting, or defending decisions regarding the appointment, hiring, or retention of employees or for complying with any requirements of the federal Internal Revenue Service regarding access to federal tax information.

d. A State agency whose employees’ job duties require access to federal tax information shall establish a policy for background investigations applicable to current and prospective employees and individuals employed or utilized by contractors subject to subsection b. of this section.

e. An individual shall be disqualified from having access to federal tax information if that individual’s criminal history background check reveals a record of conviction of any of the following crimes or offenses:

(1) in New Jersey, any crime or disorderly persons offense:

(a) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(b) involving forgery or fraudulent practices as set forth in chapter 21 of Title 2C of the New Jersey Statutes; or

(2) in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

f. (1) Notwithstanding the provisions of subsection e. of this section, an individual shall not be disqualified from having access to federal tax information on the basis of any conviction disclosed by a criminal history background check performed pursuant to subsection b. of this section if the individual has affirmatively demonstrated to the agency head or the agency head’s designee clear and convincing evidence of the individual’s rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(a) the nature and responsibility of the position involved in which access to federal tax information is authorized or required;

(b) the nature and seriousness of the offense;

(c) the circumstances under which the offense occurred;

(d) the date of the offense;

(e) the age of the individual when the offense was committed;

(f) whether the offense was an isolated or repeated incident;

(g) any social conditions which may have contributed to the offense; and

(h) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

(2) The agency head or the agency head’s designee shall make the final determination regarding the disqualification from access to federal tax information by an individual with a criminal conviction specified under this section.

g. For purposes of this section:

“Contractor” means a contractor or subcontractor that provides goods or services to a State agency.

“Federal tax information” means federal tax returns and return information, and information derived therefrom, in the possession or control of an agency which is covered by the confidentiality protections of the federal Internal Revenue Code and subject to the safeguarding requirements paragraph (4) of subsection (p) of section 6103 of the federal Internal Revenue Code (26 U.S.C. s.6103), including federal Internal Revenue Service oversight.

“State agency” means a department, division, office, board, commission, council, or bureau in the Executive branch of State government.

3. This act shall take effect immediately.

STATEMENT

This bill requires certain State and local government agency employees with access to federal tax information to undergo criminal history background checks in order to comply with recent updates to tax information security guidelines for federal, state, and local agencies that have been adopted by the federal Internal Revenue Service under its Safeguards Program.

Under the bill, a State or local government agency that obtains federal tax information is required to have criminal history record background checks conducted for any individual employed by that agency or employed or utilized by a contractor of that agency who has been identified by the agency as being authorized to have access to federal tax information. The bill requires a follow-up criminal history record background check to similarly be conducted at least once every ten years for those individuals who are employed by a State or local government agency or employed or utilized by a contractor of that agency as a condition of having continued access to federal tax information.

The bill requires each individual that has been determined by a State or local government agency to require a criminal history record background check to submit to the agency that individual’s name, address, and fingerprints taken by a State or municipal law enforcement agency or by a private entity under contract with the State. The bill requires these fingerprints to be submitted to the Superintendent of State Police for a criminal history record background check to be performed, and directs the superintendent to compare the fingerprints with fingerprints on file with the Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation.

The bill permits a State or local government agency to authorize an individual employed by that agency or employed or utilized by a contractor of that agency to have access to federal tax information if the individual’s criminal history record background check does not reveal a record of conviction of any of the following crimes or offenses: (1) in New Jersey, any crime or disorderly persons offense: (a)  involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or (b) involving forgery or fraudulent practices as set forth in chapter 21 of Title 2C of the New Jersey Statutes; or (2)  in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described above. The bill requires an individual to be disqualified from having access to federal tax information if that individual’s criminal history background check reveals a record of conviction of any of those previously specified crimes or offenses, unless the individual has affirmatively demonstrated to the agency clear and convincing evidence of the individual’s rehabilitation.

The bill provides that if a prospective employee or individual employed or utilized by a contractor refuses to consent to the securing of a criminal history record background check, the State or local government agency is prohibited from employing or utilizing that person in a position for which access to federal tax information is required. If a current employee of a State or local government agency refuses to consent to the check, the employing agency shall terminate that employee’s access to federal tax information and may remove that employee from any position requiring such access, but shall make a reasonable effort to retain that individual as an employee in another position within the agency that does not require access to federal tax information and for which the current employee is qualified.

The bill provides that the cost of a criminal history record background check is to be borne by the State agency in the case of a current or prospective employee of the State agency, and may be borne by the local government agency or by the current or prospective employee in the case of a current or prospective employee of a local government agency. The bill specifies that the cost of a check is not to be borne by the State or local government agency in the case of an individual employed or utilized by a contractor.

The bill requires a State or local government agency whose employees’ job duties require access to federal tax information to establish a policy for background investigations applicable to current and prospective employees and individuals employed or utilized by contractors.

The bill is scheduled to take effect immediately upon enactment.