

**HOUSE . . . . . No. 4093**

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**The Commonwealth of Massachusetts**



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*December 22, 2017*

To the Honorable House of Representatives,

I am submitting for your consideration “An Act to Ensure Compliance with Federal Standards Regarding the Handling of Federal Tax Information.” This legislation is required for Massachusetts to comply with IRS Publication 1075, which sets new federal background check requirements for employees and contractors who have access to federal tax information.

This bill inserts a new Section 18X into Chapter 6A of the General Laws. This new section requires agencies to obtain state and national fingerprint-based criminal background checks for any current or prospective employee whose position requires or includes access to federal tax information, authorizes such agencies to obtain that information, sets forth a process to do so, and provides for a fee to cover the costs of operating and administering the system.

The legislation primarily applies to the Department of Revenue, but will also apply to any agency for which access to federal tax information is necessary to the agency’s core objective, as determined by the head of the agency.

This legislation has been reviewed and approved by the appropriate federal authorities and I urge its prompt enactment.

Respectfully submitted

Charles D. Baker,

*Governor*

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Message from [BACKING TEXT].

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## The Commonwealth of Massachusetts

—————  
In the One Hundred and Ninetieth General Court  
(2017-2018)  
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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.

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

50 (e) Authorized department staff of the requesting agency may receive all available  
51 criminal offender record information to the extent required by federal law and the results of  
52 checks of state and national criminal history information databases under said Public Law 92-  
53 544. Upon receipt of the results of the state and national criminal background checks, the agency  
54 head and other authorized staff shall treat the information according to sections 167-178,  
55 inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record

56 information. Information obtained by the agency under this section may be used only for  
57 employment purposes as it relates to access to federal tax information.

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

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

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

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

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

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

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

99 available within the employing agency, the current agency employee may be reassigned to said  
100 position at the sole discretion of the agency head and subject to the business needs of the agency.

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

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