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No. 1801

H.P. 1282

House of Representatives, May 30, 2019

**An Act To Ensure Compliance with Federal Requirements for
Background Checks of Certain Department of Health and Human
Services Employees**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HYMANSON of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA §§2111 to 2113** are enacted to read:

3 **§2111. Criminal history record information of employees and applicants for**
4 **employment**

5 **1. Criminal history record information obtained from the Federal Bureau of**
6 **Investigation.** The department shall obtain national criminal history record information
7 from the Federal Bureau of Investigation for any individual not employed with the
8 department who has applied for and may be offered employment requiring access to
9 federal tax information. For employees employed with the department on the effective
10 date of this section who did not undergo a criminal history background check prior to
11 their employment and whose employment requires access to federal tax information, the
12 department shall obtain national criminal history record information from the Federal
13 Bureau of Investigation for each employee within one year after the effective date of this
14 section.

15 **2. Fingerprinting.** An individual not employed with the department applying for
16 employment with the department that requires access to federal tax information must
17 consent to having fingerprints taken for use in accordance with this section before the
18 individual may be employed by the department. Employees of the department whose
19 employment requires access to federal tax information must consent to having
20 fingerprints taken for use in accordance with this section upon request by the department.
21 The State Police shall take or cause to be taken the applicant's fingerprints and shall
22 forward the fingerprints to the Department of Public Safety, Bureau of State Police, State
23 Bureau of Identification so that the State Bureau of Identification can conduct state and
24 national criminal history record checks for the department. The State Police may charge
25 the department for the expenses incurred in processing state and national criminal history
26 record checks. The full fee charged under this subsection must be deposited in a
27 dedicated revenue account for the State Bureau of Identification with the purpose of
28 paying costs associated with the maintenance and replacement of the criminal history
29 record systems.

30 **3. Confidentiality.** All information obtained by the department pursuant to this
31 section is confidential and is not a public record pursuant to Title 1, chapter 13.

32 **4. Access to criminal history record information.** The department shall provide an
33 applicant or employee of the department with access to information obtained pursuant to
34 this section, if requested, by providing a paper copy of the criminal history record
35 information directly to the applicant or employee, but only after the department confirms
36 that the applicant or employee is the subject of the record. The department shall publish
37 guidance on requesting such information from the Federal Bureau of Investigation.

38 **5. Reinvestigation.** The department shall conduct a reinvestigation within 10 years
39 after the date of the previous criminal history background check under this section for
40 each individual requiring access to federal tax information.

1 **§2112. Criminal history record information of providers of contract services**

2 **1. Criminal history record information obtained from the Federal Bureau of**
3 **Investigation.** The department shall obtain national criminal history record information
4 from the Federal Bureau of Investigation for any individual who provides or is assigned
5 to provide services to the department pursuant to an identified contract. For purposes of
6 this section, "individual" means a person who is employed by any of the department's
7 contractors or their subcontractors. For purposes of this section, "identified contract"
8 means a contract that the department determines involves access or the substantial
9 possibility of access to the department's information technology systems or to
10 confidential taxpayer information.

11 **2. Fingerprinting.** An individual who provides or is assigned to provide services to
12 the department pursuant to an identified contract must consent to having fingerprints
13 taken for use in accordance with this section before the individual may provide services.
14 The State Police shall take or cause to be taken the individual's fingerprints and shall
15 forward the fingerprints to the Department of Public Safety, Bureau of State Police, State
16 Bureau of Identification so that the State Bureau of Identification can conduct state and
17 national criminal history record checks for the department. The State Police may charge
18 the department for the expenses incurred in processing state and national criminal history
19 record checks. The full fee charged under this subsection must be deposited in a
20 dedicated revenue account for the State Bureau of Identification with the purpose of
21 paying costs associated with the maintenance and replacement of its criminal history
22 record systems.

23 **3. Confidentiality.** All information obtained by the department pursuant to this
24 section is confidential and is not a public record pursuant to Title 1, chapter 13.

25 **4. Access to criminal history record information.** The department shall provide an
26 individual who provides fingerprints pursuant to this section with access to information
27 obtained pursuant to this section, if requested, by providing a paper copy of the criminal
28 history record information directly to the individual, but only after the department
29 confirms that the individual is the subject of the record. The department shall publish
30 guidance on requesting such information from the Federal Bureau of Investigation.

31 **5. Reinvestigation.** The department shall conduct a reinvestigation within 10 years
32 after the date of the previous criminal history background check under this section for
33 each individual requiring access to federal tax information.

34 **6. Application to other state agencies.** This section does not apply to services
35 provided by another agency of the State.

36 **§2113. Authority to adopt rules or policies for background checks**

37 **1. Authorization to establish rules for background checks.** The department may,
38 pursuant to rules adopted by the department or pursuant to departmental policy, conduct
39 background checks for each employee and prospective employee, and for each employee
40 of a contractor or subcontractor, whose employment requires access to federal tax
41 information. The background check must include criminal history record information

1 obtained from the Department of Public Safety, Bureau of State Police, State Bureau of
2 Identification and the Federal Bureau of Investigation.

3 A. The criminal history record information obtained from the State Bureau of
4 Identification pursuant to this section must include a record of public criminal history
5 record information as defined in Title 16, section 703, subsection 8.

6 B. The criminal history record information obtained from the Federal Bureau of
7 Investigation pursuant to this section must include other state and national criminal
8 history record information.

9 C. A person subject to a background check pursuant to this section shall submit to
10 having fingerprints taken.

11 D. In addition to access to criminal history record information provided by the
12 department to an applicant, employee or individual under section 2111, subsection 4
13 and section 2112, subsection 4, the subject of a Federal Bureau of Investigation
14 criminal history record check conducted pursuant to this section may obtain a copy of
15 the criminal history record check by following the procedures outlined in 28 Code of
16 Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history
17 record check conducted pursuant to this section may inspect and review the criminal
18 history record information pursuant to Title 16, section 709.

19 E. Information obtained pursuant to this section is confidential. The results of
20 background checks received by the department are for official use only and may not
21 be disseminated outside the department except in an administrative proceeding
22 appealing or relating to a decision made by the department involving the background
23 check or in a court proceeding.

24 **2. Rulemaking.** Rules adopted by the department pursuant to this section are
25 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

26 **Sec. 2. 25 MRSA §1542-A, sub-§1, ¶Q,** as enacted by PL 2017, c. 457, §13, is
27 amended to read:

28 Q. Who is an applicant for licensure with the State Board of Nursing as required
29 under Title 32, section 2111, subsection 1; or

30 **Sec. 3. 25 MRSA §1542-A, sub-§1, ¶R,** as enacted by PL 2017, c. 457, §13, is
31 amended to read:

32 R. Who is required to have a criminal background check under Title 22, section
33 8302-A or 8302-B; or

34 **Sec. 4. 25 MRSA §1542-A, sub-§1, ¶S** is enacted to read:

35 S. Who is required to have a criminal background check under Title 19-A, section
36 2111 or 2112.

37 **Sec. 5. 25 MRSA §1542-A, sub-§3, ¶R** is enacted to read:

1 Publication 1075, which requires fingerprinting of all affected individuals. This bill
2 amends provisions relating to the Department of Public Safety, Bureau of State Police,
3 State Bureau of Identification that set forth the procedures for taking and processing
4 fingerprints. This bill authorizes the department to adopt rules to conduct background
5 checks. This bill also corrects a conflict created by Public Law 2017, chapters 452 and
6 457, which affected the same provision of law, by incorporating the changes made by
7 both laws.