



# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 1931

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H.P. 1375

House of Representatives, January 8, 2020

**An Act To Require Background Investigations for Certain  
Individuals To Receive Federal Tax Information in Accordance with  
Federal Standards**

(EMERGENCY)

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Submitted by the Department of Labor pursuant to Joint Rule 203.  
Reference to the Committee on Labor and Housing suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative SYLVESTER of Portland.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the Department of Labor is currently under a security compliance audit by  
4 the United States Internal Revenue Service; and

5           **Whereas,** loss of access to federal tax information by the department could cause  
6 irreparable damage to the enforcement efforts of the department; and

7           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
8 the meaning of the Constitution of Maine and require the following legislation as  
9 immediately necessary for the preservation of the public peace, health and safety; now,  
10 therefore,

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

12           **Sec. 1. 25 MRSA §1542-A, sub-§1, ¶U** is enacted to read:

13           U. Who is an affected person, as defined in Title 26, section 1085, subsection 1,  
14 paragraph A, whose fingerprints have been required by the department pursuant to  
15 Title 26, section 1085.

16           **Sec. 2. 25 MRSA §1542-A, sub-§3, ¶T** is enacted to read:

17           T. The State Police shall take or cause to be taken the fingerprints of the person  
18 named in subsection 1, paragraph U at the request of that person and upon payment  
19 of the expenses by the Department of Labor, Bureau of Unemployment  
20 Compensation as specified under Title 26, section 1085, subsection 3.

21           **Sec. 3. 25 MRSA §1542-A, sub-§4-A** is enacted to read:

22           **4-A. Duty to submit fingerprints to State Bureau of Identification; affected**  
23 **persons under Title 26, section 1085. Fingerprints taken pursuant to subsection 1,**  
24 **paragraph U must be transmitted immediately to the State Bureau of Identification to**  
25 **enable the bureau to conduct state and national criminal history record checks for the**  
26 **Department of Labor.**

27           **Sec. 4. 26 MRSA §1085** is enacted to read:

28 **§1085. Access to federal tax information; background investigation requirements**

29           **1. Definitions. As used in this section, unless the context otherwise indicates, the**  
30 **following terms have the following meanings.**

31           A. "Affected person" means a person who is:

32           (1) An applicant for employment with the bureau who will have access to federal  
33 tax information as part of that employment;

34           (2) A contractor for the bureau who provides or is assigned to provide services to  
35 the bureau under an identified contract. For the purposes of this subparagraph,

1 "identified contract" means a contract that the Director of Unemployment  
2 Compensation determines involves access, or the substantial possibility of access,  
3 to the bureau's information technology systems that contain federal tax  
4 information;

5 (3) An employee of the bureau who has or will be given access to federal tax  
6 information as part of that employee's employment with the bureau and has not  
7 undergone a federal background investigation within the past 10 years; or

8 (4) An employee or contractor of another state agency, if the bureau determines  
9 the duties of that employee or contractor involve access or the substantial  
10 possibility of access through the bureau to federal tax information obtained from  
11 the United States Internal Revenue Service or the Department of Administrative  
12 and Financial Services, Bureau of Revenue Services.

13 B. "Contractor" includes a contractor's employees and subcontractors and employees  
14 of those subcontractors.

15 C. "Federal tax information" means returns and return information as defined in the  
16 United States Internal Revenue Code of 1986, Section 6103(b) that are received  
17 directly from the United States Internal Revenue Service or obtained through a  
18 secondary source authorized by the Internal Revenue Service and that are subject to  
19 the confidentiality protections and safeguarding requirements of the United States  
20 Internal Revenue Code of 1986 and corresponding federal regulations and guidance.  
21 "Federal tax information" also includes information received as part of the treasury  
22 offset program under the authority of the United States Internal Revenue Code of  
23 1986, Section 6103(l)(10) from the United States Department of the Treasury, Bureau  
24 of the Fiscal Service. "Federal tax information" does not include information in the  
25 possession of the State that is obtained by means wholly from sources independent  
26 from the Internal Revenue Service.

27 **2. Federal background investigation requirements.** The Bureau of  
28 Unemployment Compensation shall perform background investigations for affected  
29 persons in accordance with this subsection. A federal background investigation  
30 conducted pursuant to this subsection must include fingerprinting and obtaining national  
31 criminal history record information from the Federal Bureau of Investigation and must  
32 satisfy the background investigation standards established by the United States Internal  
33 Revenue Service regarding access to federal tax information.

34 A. As part of the process of evaluating an affected person for employment with the  
35 bureau involving access to federal tax information, a federal background  
36 investigation must be conducted before an offer of employment is extended.

37 B. A federal background investigation for an affected person assigned to provide  
38 services to the bureau under an identified contract must be conducted before that  
39 affected person begins providing services to the bureau and at least once every 10  
40 years as long as the affected person continues providing services to the bureau.

41 C. As part of the process of evaluating an affected person for continued employment  
42 with the bureau, a federal background investigation must be conducted at least once  
43 every 10 years. If an affected person has not been subject to a federal background

1 investigation within 10 years prior to the effective date of this section, a federal  
2 background investigation must be conducted within one year of the effective date of  
3 this section.

4 D. A federal background investigation for an affected person who is an employee or  
5 contractor of another state agency must be conducted before that affected person is  
6 provided access, or the substantial possibility of access, to federal tax information  
7 obtained from the bureau and at least once every 10 years as long as the affected  
8 person continues to have such access, except that, if the bureau determines that the  
9 affected person has been subject to a background investigation that satisfies the  
10 background investigation standards established by the United States Internal Revenue  
11 Service regarding access to federal tax information within the past 10 years, no  
12 further investigations are required under this paragraph for the 10-year period  
13 commencing at the time of the federal background investigation.

14 **3. Fingerprinting.** An affected person must consent to having fingerprints taken for  
15 use in background investigations in accordance with this subsection. The State Police  
16 shall take or cause to be taken the affected person's fingerprints and shall forward the  
17 fingerprints to the Department of Public Safety, State Bureau of Identification so that the  
18 State Bureau of Identification can conduct state and national criminal history record  
19 checks for the Bureau of Unemployment Compensation. The State Police may charge the  
20 Bureau of Unemployment Compensation for the expenses incurred in processing state  
21 and national criminal history record checks. The full fee charged under this subsection  
22 must be deposited in a dedicated revenue account for the State Bureau of Identification  
23 with the purpose of paying costs associated with the maintenance and replacement of the  
24 criminal history record systems.

25 **4. Confidentiality.** All information obtained by the bureau pursuant to this section  
26 is confidential and not a public record as defined in Title 1, section 402, subsection 3.  
27 The information may be used only for making decisions regarding the suitability of an  
28 affected person for new or continued employment with the bureau, to provide services to  
29 the bureau under an identified contract or to access federal tax information obtained from  
30 the bureau.

31 **5. Affected person's access to criminal history record information.** The bureau  
32 shall provide an affected person with access to information obtained pursuant to this  
33 section, if requested, by providing a paper copy of the criminal history record information  
34 directly to the affected person, but only after the bureau confirms that the affected person  
35 is the subject of the record. In addition, the bureau shall publish guidance on requesting  
36 such information from the Federal Bureau of Investigation.

37 **6. Disqualifying offenses; refusal to consent.** The Director of Unemployment  
38 Compensation shall review the information obtained under this section and determine  
39 whether an affected person has a disqualifying offense that would prohibit authorizing  
40 that individual to access federal tax information. Refusal by the affected person to  
41 consent to the background investigation requirements under this section is deemed a  
42 disqualifying offense.

43 The following applies to an affected person who has a disqualifying offense:

