

Date: (Filing No. H-)

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1282, L.D. 1801, Bill, "An Act To Ensure Compliance with Federal Requirements for Background Checks of Certain Department of Health and Human Services Employees"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 19-A MRSA §2111 is enacted to read:

§2111. Criminal history record checks for Department of Health and Human Services employees, applicants for employment, contractors and subcontractors

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

A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation.

B. "State Police" means the Department of Public Safety, Bureau of State Police.

2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any person employed by the department, who may be offered employment by the department or who is employed by or may be offered employment by a department contractor or subcontractor in order to comply with the United States Internal Revenue Service's tax information security guidelines for federal, state and local agencies.

3. Fingerprint-based criminal history obtained. A person employed by the department or a person who is employed by a department contractor or subcontractor shall consent to and have the person's fingerprints taken. A person who may be offered employment by the department or by a department contractor or subcontractor shall

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1 consent to and have the person's fingerprints taken prior to being employed by the
2 department or by a department contractor or subcontractor. The State Police shall take or
3 cause to be taken the fingerprints of a person who has consented under this subsection
4 and shall forward the fingerprints to the Department of Public Safety so that the
5 Department of Public Safety may conduct a state and national criminal history record
6 check on the person. The Department of Public Safety shall forward the results obtained
7 to the department. The fee charged to the department by the State Police must be
8 consistent with the fee charged to executive branch agencies receiving similar services.
9 Except for the portion of the payment that constitutes the processing fee charged by the
10 Federal Bureau of Investigation, all money received by the State Police under this
11 subsection must be paid to the Treasurer of State, who shall apply the money to the
12 expenses of administration of this section by the Department of Public Safety.

13 **4. Updates to information.** The department may request a subsequent criminal
14 history record check under subsection 3 on an employee, a person who has been offered
15 employment by the department, an employee of a department contractor or subcontractor
16 or a person who has been offered employment by a department contractor or
17 subcontractor as the department determines appropriate, including continuous
18 notifications of updated criminal history record information if a service providing
19 notifications of updated criminal history record information becomes available.

20 **5. Confidentiality.** Information obtained pursuant to this section is confidential and
21 may not be disseminated for purposes other than as provided in subsections 6 and 7.

22 **6. Use of information obtained.** Criminal history record information obtained
23 pursuant to this section may be used by the department for employment purposes to
24 screen an employee, a person who may be offered employment by the department, an
25 employee of a department contractor or subcontractor or a person who may be offered
26 employment by a department contractor or subcontractor. The subject of any criminal
27 history record check under subsection 3 may contest any negative decision made by the
28 department based upon the information received pursuant to the criminal history record
29 check.

30 **7. Person's access to information obtained.** A person subject to a criminal history
31 record check pursuant to subsection 3 must be notified each time a criminal history record
32 check is performed on the person. A person subject to a criminal history record check
33 under subsection 3 may inspect and review the criminal history record information
34 pursuant to Title 16, section 709 and obtain federal information obtained pursuant to the
35 criminal history record check by following the procedures outlined in 28 Code of Federal
36 Regulations, Sections 16.32 and 16.33.

37 **8. Right of subject to remove fingerprints from record.** Upon request from a
38 person subject to a criminal history record check pursuant to subsection 3, the
39 Department of Public Safety shall remove the person's fingerprints from the Department
40 of Public Safety's records and provide written confirmation of the removal to the person.

41 **Sec. 2. 25 MRSA §1542-A, sub-§1, ¶P,** as enacted by PL 2017, c. 452, §25 and
42 c. 457, §13, is repealed and the following enacted in its place:

43 P. Who is licensed under Title 32, chapter 36 and has applied for an expedited
44 license under Title 32, section 18506;

1 **Sec. 3. 25 MRSA §1542-A, sub-§1, ¶¶Q and R**, as enacted by PL 2017, c. 457,
2 §13, are amended to read:

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

5 R. Who is required to have a criminal background check under Title 22, section
6 8302-A or 8302-B;

7 **Sec. 4. 25 MRSA §1542-A, sub-§1, ¶¶S and T** are enacted to read:

8 S. Who is required to have a criminal history record check under Title 22, section
9 2425-A, subsection 3-A; or

10 T. Who is required to have a criminal history record check under Title 19-A, section
11 2111.

12 **Sec. 5. 25 MRSA §1542-A, sub-§3, ¶O**, as enacted by PL 2017, c. 452, §26 and
13 c. 457, §15, is repealed and the following enacted in its place:

14 O. The State Police shall take or cause to be taken the fingerprints of the person
15 named in subsection 1, paragraph P at the request of that person and upon payment of
16 the expenses by that person as required by Title 32, section 2571-A.

17 **Sec. 6. 25 MRSA §1542-A, sub-§3, ¶¶R and S** are enacted to read:

18 R. The State Police shall take or cause to be taken the fingerprints of the person
19 named in subsection 1, paragraph S at the request of that person or the Department of
20 Administrative and Financial Services under Title 22, section 2425-A, subsection
21 3-A.

22 S. The State Police shall take or cause to be taken the fingerprints of the person
23 named in subsection 1, paragraph T at the request of that person or the Department of
24 Health and Human Services pursuant to Title 19-A, section 2111.

25 **Sec. 7. 25 MRSA §1542-A, sub-§4**, as amended by PL 2017, c. 452, §27 and c.
26 457, §16, is repealed and the following enacted in its place:

27 **4. Duty to submit to State Bureau of Identification.** It is the duty of the law
28 enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B
29 and G to transmit immediately to the State Bureau of Identification the criminal
30 fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or
31 pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless
32 an express request is made by the commanding officer of the State Bureau of
33 Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be
34 transmitted immediately to the State Bureau of Identification to enable the bureau to
35 conduct state and national criminal history record checks for the Department of
36 Education. The bureau may not use the fingerprints for any purpose other than that
37 provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints,
38 except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken
39 pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted
40 immediately to the State Bureau of Identification to enable the bureau to conduct state
41 and national criminal history record checks for the court and the Department of Public

1 Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection
2 1, paragraph J, K, L or S must be transmitted immediately to the State Bureau of
3 Identification to enable the bureau to conduct state and national criminal history record
4 checks for the Department of Administrative and Financial Services. Fingerprints taken
5 pursuant to subsection 1, paragraph P must be transmitted immediately to the State
6 Bureau of Identification to enable the bureau to conduct state and national criminal
7 history record checks for the Board of Osteopathic Licensure, established in Title 32,
8 chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted
9 immediately to the State Bureau of Identification to enable the bureau to conduct state
10 and national criminal history record checks for the Board of Licensure in Medicine,
11 established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph
12 Q must be transmitted immediately to the State Bureau of Identification to enable the
13 bureau to conduct state and national criminal history record checks for the State Board of
14 Nursing, established in Title 32, chapter 31. Fingerprints taken pursuant to subsection 1,
15 paragraph O must be transmitted immediately to the State Bureau of Identification to
16 enable the bureau to conduct state and national criminal history record checks under Title
17 28-B, section 204. Fingerprints taken pursuant to subsection 1, paragraph R or T must be
18 transmitted immediately to the State Bureau of Identification to enable the bureau to
19 conduct state and national criminal history record checks for the Department of Health
20 and Human Services.'

21

SUMMARY

22 This amendment strikes and replaces the bill to be consistent with criminal history
23 record check practices. It incorporates provisions that address existing technical conflicts
24 in the criminal history record check statutes.

25

FISCAL NOTE REQUIRED

26

(See attached)