

CHAPTER 179

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:

C.40A:9-2.1 Criminal history record background checks for certain employees of local government agencies.

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 it has been 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) On behalf of a local government agency, the jurisdictional State agency head is 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 making determinations required by this act. The Division of State Police also shall promptly notify the jurisdictional State agency if an individual who was the subject of a criminal history record background check conducted pursuant to this section is convicted of a crime or offense in this State after the date that the criminal history record background check was performed. Upon receipt of such notification, the jurisdictional State agency head shall make a determination regarding the individual's qualification to access federal tax information. A criminal history record background check shall not be performed pursuant to this act unless the employee or individual shall have furnished written consent to the check.

(2) An individual determined to require a criminal history record background check in accordance with subsection b. of this section shall submit to the jurisdictional State agency head 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.

(3) 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.

(4) 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. Nothing in this act shall require a local government agency to bear the cost of a criminal history record background check in the case of an individual employed or utilized by a contractor.

(5) (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 local government 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.

(6) 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 jurisdictional State agency head 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 jurisdictional State agency head 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 a local government 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.

“Jurisdictional State agency” means a State department with jurisdiction over a local government agency or the function performed by a local government agency for which the local government agency requires access to federal tax information to perform its official duties. Examples of a jurisdictional State agency include the Department of Human Services for county welfare agencies or the Department of the Treasury for local taxation boards.

“Jurisdictional State agency head” means the commissioner of a department in the Executive branch of State government or an individual in that department designated by the commissioner, which department serves as the jurisdictional State agency with respect to a local government agency.

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

C.52:18A-258 Criminal history background checks for certain employees of State agencies.

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 it has been 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 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 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 determines that federal Internal Revenue Service standards governing access to federal tax information require a criminal history record background check.

c. (1) The agency head of a State agency is 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 making determinations required by this act. The Division of State Police also shall promptly notify the State agency if an individual who was the subject of a criminal history record background check conducted pursuant to this section is convicted of a crime or offense in this State after the date that the criminal history record background check was performed. Upon receipt of such notification, the agency head shall make a determination regarding the individual's qualification to access federal tax information. A criminal history record background check shall not be performed pursuant to this act unless the employee or individual shall have furnished written consent to the check.

(2) 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 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.

(3) 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.

(4) 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. Nothing in this act shall require the State agency to bear the cost of a criminal history record background check in the case of an individual employed or utilized by a contractor.

(5) (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 State 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.

(6) 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 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 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:

“Agency head” means, with respect to a department in the Executive branch of State government or any division, office, board, commission, council, or bureau allocated to that department, the commissioner of the department or an individual in that department designated by the commissioner and, with respect to the Judicial branch of State government, the Director of the Administrative Office of the Courts or an individual designated by the director.

“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 a State 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.

“State agency” means a department, division, office, board, commission, council, or bureau in the Executive branch of State government, including the Department of the Treasury, the Department of Human Services, the Department of Labor and Workforce Development, and any other State agency that submits to the federal Internal Revenue Service a request for access to federal tax information to perform its official duties, and the Judicial branch of State government.

3. This act shall take effect immediately.

Approved July 21, 2017.