

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 968 - L.D. 1340

An Act To Require Criminal History Record Checks for All Prospective and Current Staff Members of the Office of the State Auditor

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

Whereas, the work of the Office of the State Auditor requires that its employees have access to federal tax information and other confidential financial records; and

Whereas, the United States Internal Revenue Service requires state agencies that permit employees and contractors access to federal tax information must complete a criminal history background investigation that is favorably adjudicated; and

Whereas, this background investigation must include submission of fingerprints to the United States Department of Justice, Federal Bureau of Investigation; and

Whereas, the work of the Office of the State Auditor will be delayed until such time as its employees have completed the required criminal history background investigation; and

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

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

Sec. 1. 5 MRSA §247 is enacted to read:

§247. Criminal history background checks for State Auditor employees

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

A. "Department" means the Department of Public Safety, State Bureau of Identification.

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

C. "Office" means the Office of the State Auditor.

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

2. Criminal history; information about criminal records and data obtained. The office 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, created pursuant to Title 16, section 631, and the Federal Bureau of Investigation for any person employed by or who may be offered employment by the office 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 office shall consent to having the person's fingerprints taken. A person who may be offered employment by the office shall consent to and have the person's fingerprints taken prior to being employed by the office. The Maine State Police shall take or cause to be taken the fingerprints of a person who has consented under this subsection and shall forward the fingerprints to the department so that the department may conduct a state and national criminal history record check on the person. The department shall forward the results obtained to the office. The fee charged to the office by the Maine State Police must be consistent with the fee charged to executive branch agencies receiving similar services. Except for the portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the Maine State Police under this subsection must be paid to the Treasurer of State, who shall apply the money to the expenses of administration of this section by the department.

4. Reliance on criminal history record information. The office may rely on the information from the department under subsection 3 for 24 months after receiving the information.

5. Updates to information. The office may request a subsequent criminal background check under subsection 3 on an employee or a person who may be offered employment by the office as the office determines appropriate, including receiving continuous notifications of updated criminal history record information if a service providing notifications of updated criminal history record information becomes available.

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

7. Use of information obtained. Criminal history record and fingerprint information obtained pursuant to this section may be used by the office to screen an employee and a person who may be offered employment by the office for employment purposes. The subject of any criminal background check search under subsection 3 may

contest any negative decision made by the office based upon the information received pursuant to the criminal background check.

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

9. Right of subject to remove fingerprints from record. Upon request from an applicant for employment by the office who was fingerprinted but not hired or a former employee of the office, the department shall remove the applicant's or former employee's fingerprints from the department's records and provide written confirmation of the removal to the applicant or former employee.

Sec. 2. 25 MRSA §1542-A, sub-§1, ¶P, as enacted by PL 2017, c. 452, §25, is reallocated to 25 MRSA §1542-A, sub-§1, ¶S.

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

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

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

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

T. Who is employed or may be offered employment by the Office of the State Auditor as required under Title 5, section 247.

Sec. 5. 25 MRSA §1542-A, sub-§3, ¶O, as enacted by PL 2017, c. 452, §26, is repealed.

Sec. 6. 25 MRSA §1542-A, sub-§3, ¶R is enacted to read:

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

Sec. 7. 25 MRSA §1542-A, sub-§3, ¶S is enacted to read:

S. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph T at the request of that person or the Office of the State Auditor and upon payment by the Office of the State Auditor of the fee established in Title 5, section 247, subsection 3.

Sec. 8. 25 MRSA §1542-A, sub-§4, as amended by PL 2017, c. 452, §27 and c. 457, §16, is repealed and the following enacted in its place:

4. Duty to submit to State Bureau of Identification. It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B and G to transmit immediately to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau may not use the fingerprints for any purpose other than that provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court and the Department of Public Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection 1, paragraph J, K, L or S must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Administrative and Financial Services. Fingerprints taken pursuant to subsection 1, paragraph P must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Osteopathic Licensure, established in Title 32, chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Licensure in Medicine, established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph Q must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the State Board of Nursing, established in Title 32, chapter 31. Fingerprints taken pursuant to subsection 1, paragraph O must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks under Title 28-B, section 204. Fingerprints taken pursuant to subsection 1, paragraph R must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Health and Human Services. Fingerprints taken pursuant to subsection 1, paragraph T must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Office of the State Auditor.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

AUDITOR, OFFICE OF THE STATE

Audit Bureau 0067

Initiative: Provides funding for employee fingerprint-based background checks required by the United States Internal Revenue Service.

GENERAL FUND	2019-20	2020-21
All Other	\$784	\$118
GENERAL FUND TOTAL	\$784	\$118
OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
All Other	\$1,216	\$182
OTHER SPECIAL REVENUE FUNDS TOTAL	\$1,216	\$182

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.